

VIRGINIA RACING COMMISSION

December 16, 2015

JAMES MONROE BUILDING
CONFERENCE ROOM B
101 N. 14TH STREET
RICHMOND, VA 23219

Commencing at 10:00 a.m.

COMMISSION MEMBERS:

J. Sargeant Reynolds, Jr., Chairman
D.G. Van Clief, Jr., Vice Chairman
Dr. Charles Steger
Carol G. Dawson
I. Clinton Miller

COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary
C. Richard Harden, DVM, Equine Medical Director
David S. Lermond, Deputy Executive Secretary
Kimberly C. Mackey, Office Administrator

OFFICE OF AGRICULTURE AND FORESTRY:

Sam Towell, Deputy Secretary of Agriculture and Forestry

ATTORNEY GENERAL'S OFFICE:

J. Duncan Pitchford, Esquire

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1 CHAIRMAN REYNOLDS: Good morning. It's ten
2 o'clock and I'd like to call the Virginia Racing
3 Commission meeting for December 16, 2015 to order.
4 I'd like the record to show that all of the
5 commissioners are present.

6 The first order of business, I'd like to go
7 ahead and set the date for the next commission
8 meeting, and we're going to schedule that for
9 January 6, that's Wednesday, 2016, at ten o'clock,
10 and we'll let you know where that's going to be
11 held. If for some reason we don't need to meet, we
12 will let you know, but we wanted to get it on
13 everybody's books. Does that work for everybody?
14 That works for the commissioners. All right.
15 Thank you very much.

16 The first order of business is to hear the
17 appeal in the matter of Mark Gray. Mr. Hettel,
18 will you walk us through that?

19 MR. HETTEL: Yes, sir. Mr. Gray was the
20 subject of a ruling dated November 16, 2015 from
21 the harness racing at Oak Ridge. The stewards'
22 ruling is a part of your packet. Also in that
23 packet, there is a result from the official testing
24 laboratory, the slip from the detention barn and
25 the supporting documentation.

1 Also in your packet, you will find a report of
2 Dr. Harden, our equine medical director, describing
3 the substance that was found in the horse,
4 post-race testing, and also you will find the
5 letter of Mr. Gray requesting the action that we
6 are taking today. So with that, if it's your
7 pleasure, Duncan --

8 CHAIRMAN REYNOLDS: We'd like to hear from Dr.
9 Harden.

10 MR. HETTEL: Dr. Harden first or the state
11 steward first?

12 CHAIRMAN REYNOLDS: It doesn't matter.

13 MR. HETTEL: Judge Tishuk, go ahead and stand
14 up and introduce yourself.

15 MR. TISHUK: My name is Paul Tishuk. I'm from
16 Ocean City, Maryland. I've worked for the Maryland
17 Racing Commission for the last 25 years as a
18 steward, judge, and I worked in Virginia in the
19 early 2000s after Colonial opened for three years
20 and then I worked at Oak Ridge since 2001 and
21 worked this last meet in October. I was the
22 presiding steward.

23 MR. PITCHFORD: Sir, before you go in to your
24 testimony, we need to swear you in. Dr. Harden and
25 Mr. Gray, if I could just do this all at once. Is

1 anyone else going to give testimony?

2 MR. HETTEL: Dave Lermond may. Dave, why don't
3 you be sworn in also?

4 MR. PITCHFORD: Okay. Please raise your right
5 hand.

6 MS. MCDONALD: I might need to.

7 MR. PITCHFORD: Ma'am, what's your name?

8 MS. MCDONALD: Anne McDonald.

9 MR. PITCHFORD: Okay. Thank you. Please raise
10 your right hand.

11 NOTE: The witnesses are sworn
12 collectively.

13 MR. PITCHFORD: All right. Thank you very
14 much. And also for purposes of the record, I have
15 marked as Exhibit A, a copy of the stewards' ruling
16 dated November 16, 2015. Exhibit B is a copy of
17 the laboratory analysis from the Commission's
18 medical laboratory, along with a copy of the
19 detention slip. Exhibit C is a copy of Dr.
20 Harden's report concerning the substance that was
21 found in the medical test, and Exhibit D is a copy
22 of Mr. Gray's appeal letter.

23 I move those be admitted.

24 CHAIRMAN REYNOLDS: Okay. All those in favor,
25 say aye.

1 NOTE: The Commission votes aye.

2 CHAIRMAN REYNOLDS: Those opposed? Hearing
3 none, the motion carries unanimously. Thank you.

4 MR. TISHUK: Okay. Subsequent to the end of
5 the meet, I received a phone call from Mr. Lermond
6 that we had a positive test, which you have in your
7 packet. The horse had -- the lab result -- the lab
8 that we go by is the ticket which you have that
9 corresponds with the same number of lab result so
10 we're certain that is that particular horse, and
11 that was 63968, which corresponds to the analysis.

12 The test came back with the horse at a reading
13 of 163 picograms per milliliter for
14 Methylprednisolone found in the blood plasma.

15 Upon receipt of that, Mr. Gray was contacted by
16 Mr. Lermond that his horse was positive, and we
17 then set up a hearing, and it was a telephone
18 hearing between Mr. Gray, Mr. Lermond, the other
19 associate judge there was a judge named Jack
20 Remy -- R-E-M-Y -- and he was on the telephone
21 hearing. Mr. Remy was in my office at Ocean Downs,
22 and Mr. Lermond was here and Dr. Harden was there
23 on that.

24 During the hearing with Mr. Gray, we listened
25 to his testimony. Upon conclusion, Mr. Lermond,

1 Mr. Remy and I deliberated, and it was our opinion
2 that Mr. Gray was in violation of Virginia rule of
3 prohibited practices, AC 10-180-35, which is no
4 trainer should allow a horse to appear in a race,
5 qualifying race or officially timed workout when a
6 horse contains in his system any prohibited
7 substance.

8 That substance, which is methylprednisolone,
9 which is on the Virginia Racing Commission
10 medication changes July 2015 highlights, and under
11 methyl, there's several drugs here, and one of them
12 is methylprednisolone, and that was posted on the
13 website of the Racing Commission in July of 2015
14 under methylprednisolone, and it says
15 methylprednisolone should not be used, or if it is
16 used, the trainer should have the horse tested at
17 his expense prior to entry to be sure the serum
18 concentration is below the regulatory limit.

19 Okay. In our deliberation, we came to the
20 conclusion that the horse was positive and that the
21 sanction should be against the horse trainer and
22 owner and a Class 4. The RCI recommendation for
23 that particular classification, which we have a
24 copy of here, is that for the trainer, it's a
25 minimum of a \$1,000 fine, absent mitigating

1 circumstances. We issued a fine for \$1,000.

2 Also for the license owner for first offense is
3 loss of purse and horse must pass
4 Commission-approved examination before being
5 eligible to race again.

6 It was our opinion that this rule was violated
7 and that we issue a ruling which was for the \$1,000
8 fine and loss of purse.

9 To be consistent with other jurisdictions, I
10 have from the Maryland Racing Commission there was
11 a ruling on 10-13 in Maryland for the same drug,
12 and this trainer received the same penalty, which
13 was for a Class 4 \$1,000 fine and loss of purse.

14 I also have a ruling here from the state of
15 Pennsylvania. This was on October 21, 2015, and
16 for the same drug, methylprednisolone, Class 4, and
17 that was also a fine of \$1,000 against the horse,
18 and I think we are consistent with every
19 jurisdiction.

20 Dr. Harden, do you have anything to say as far
21 as the conversation you had with Mr. Gray as far as
22 that?

23 COMMISSIONER MILLER: You have to speak up. I
24 know you're just talking to Dr. Harden, but all of
25 this is a matter of record. She must transcribe

1 everything you say, so speak up, please.

2 MR. TISHUK: Okay. Dr. Harden, do you have
3 anything to add?

4 DR. HARDEN: Well, in the stewards' hearing,
5 Mr. Gray indicated that he had spoken to me upon
6 arrival at Oak Ridge, and I presume that was
7 Friday, perhaps.

8 MR. GRAY: Thursday.

9 DR. HARDEN: Thursday. Okay. Prior to the
10 start of the meet, and he'd asked me if our
11 medication rules had changed. And I've had
12 basically that conversation with many people, so I
13 can't specifically say what I answered him, but
14 basically, the answer that I typically give is that
15 our rules are essentially the same as they have
16 been, with the exception of methylprednisolone,
17 which is called Depo-Medrol as a trade name, and I
18 said that we have, you know, got very strict or
19 tightened up on methylprednisolone, and that's my
20 best recollection as to what our conversation was.

21 CHAIRMAN REYNOLDS: Okay. I guess we can ask
22 you all some questions or hear all the testimony
23 and just ask questions, but I'll ask -- is it
24 Doctor or Mister?

25 MR. TISHUK: Mister.

1 CHAIRMAN REYNOLDS: You talked about the RCI
2 guidelines and the \$1,000 fine. You talked about
3 unless there are mitigating circumstances. What do
4 they mean by mitigating circumstances? What could
5 be some mitigating circumstances?

6 MR. TISHUK: Mitigating circumstances. If
7 someone had mysteriously drugged a horse. I've had
8 occasions where someone had an eye-witness where
9 someone had seen someone come to, you know, come to
10 the barn and allegedly, you know, that'd be a
11 mitigating circumstance to take into consideration.

12 CHAIRMAN REYNOLDS: Thank you very much.

13 MR. HETTEL: See if Mr. Gray has any questions
14 of him.

15 CHAIRMAN REYNOLDS: Yes. I'll let Mr. Gray
16 talk in a minute. Did any other commissioners have
17 any other questions?

18 COMMISSIONER MILLER: Just a moment. I think
19 Mr. Gray has the right to examine each witness
20 against him.

21 CHAIRMAN REYNOLDS: Yes.

22 COMMISSIONER MILLER: So you might ask him if
23 he has any questions of the judge --

24 CHAIRMAN REYNOLDS: I was going to do that.

25 COMMISSIONER MILLER: -- rather than him

1 testifying. He may want to ask a question.

2 CHAIRMAN REYNOLDS: Okay. I was going to see
3 if the commissioners have any questions first, but
4 that's fine. Mr. Gray, would you like to ask the
5 witnesses some questions or make any statements on
6 your behalf?

7 MR. GRAY: Well, as far as Dr. Harden, in
8 previous years we raced at Colonial Downs and I've
9 raced under him. He's been the state vet down
10 there several years, and I think it was three years
11 ago they changed labs and they started using a
12 kentucky lab, and I requested paperwork to give to
13 my vet that administers injections to my horses.

14 I know what to give a horse, the withdrawal
15 time on all the medications and the injections, you
16 know, stuff that you can use, stuff that you can't
17 use, the withdrawal times, so I don't run into
18 problems like this.

19 Dr. Harden will tell you that I have gotten the
20 literature from him, and Thursday before the meet
21 started, I looked him out to make sure. I said,
22 Dr. Harden, is all the medication rules the same as
23 they always are, and he said everything as far as
24 medication is the same, except for they've cracked
25 down on Depo-Medrol.

1 I said, well, this is a nice time to find out
2 about it a day before a meet is going on, when I
3 have always followed the guidelines that Virginia's
4 had the last three years that I give to my vet, and
5 we know how far out to give Depo-Medrol.

6 Now, I race in Pennsylvania, I race in
7 Maryland, Delaware, New York, New Jersey, and the
8 vets that I use know what they can use in what
9 states. I know for a fact that I can't use any
10 Depo in the state of Pennsylvania; it's a no-no.
11 And I know for a fact that I can inject a horse
12 three days out with Depo in the state of Delaware.
13 That's one of the states that's on here. Do you
14 understand? It's right here on this paperwork.

15 Now that being said, this Mid-Atlantic thing,
16 and I'm not saying -- I got a letter saying he
17 injected the horse on September 15 and she done
18 five injections and each one had Depo in it. That
19 was September 15. Now, I give myself 21 days,
20 which is what I've always had to go by with the
21 Kentucky lab.

22 Now, I'm not entering that literature. I mean
23 I have a flip-top phone. I don't have internet on
24 my phone and I don't -- I can't even turn a
25 computer on. Do you understand? But I know that

1 if there's a certain rule, that's what I abide by,
2 and I had a bunch of horses for her. She invests a
3 lot of money in the state of Virginia every year
4 and breeds and races horses in a small program, and
5 she relies on this money to make her year break
6 even and to keep going in the business.

7 Now, I've never had a Depo positive in my life.
8 I'm not saying I haven't had a Bute high or a DMSO
9 high or stuff that everybody else has, but I tried
10 to abide by the guidelines.

11 The presiding judge told me on the phone
12 conversation that me knowing that I had had him
13 injected and there was a chance -- well, if I'd
14 have known that they changed this rule in July, or
15 if somebody from the state of Virginia had emailed
16 my owner and said warning to your trainer as of
17 July 1st the medication rules have changed in the
18 state of Virginia, then I would have surely made
19 sure the horse didn't get injected with Depo. I
20 would have been like the state of Pennsylvania and
21 left it out completely, because all this literature
22 here now that I have now says no-no to Depo.
23 Right? That's the way it is, so I won't use any
24 Depo.

25 But what I'm saying is I didn't have any --

1 now, if we had raced at Colonial Downs this year,
2 which I go there every year the last week in
3 August, as soon as I can get in the barn area, I go
4 down there because I try to get these young horses
5 used to the track and finish them up and get them
6 used to the surrounding down there.

7 well, if that would have happened this year, I
8 still wouldn't have had a Depo positive, because I
9 would have talked him as soon as I got there the
10 1st of September and the horses got injected
11 September 15th. We raced a four-day meet two
12 weekends in a place in Virginia called Oak Ridge
13 under bad conditions.

14 Now we didn't ship back and forth because it
15 was too far to ship, so I moved down there and
16 stayed in a tent for two weeks with my horses and
17 with no hot water and the whole nine yards.

18 But the situation is like this. If I had known
19 that they had changed the Depo rules in the state
20 of Virginia, then the horse wouldn't have been
21 injected with Depo to begin with.

22 And the amount of Depo that they're talking
23 about is enough to fill the needle; not the
24 syringe, the needle. He come up -- the level is
25 very minute to where -- I'm not saying the horse

1 didn't come up positive and I don't know he did,
2 because I have records here where I injected horses
3 the day after. I had a vet inject horses a day
4 after this horse had.

5 All these horses I had to get in line, because
6 I didn't know whether there was a vet down there
7 that I could use, and it was only two weeks. So I
8 had all the work done in the time frame that I
9 thought I would be safe under the guidelines from
10 the Kentucky lab that I usually go by every year.
11 That's what happened.

12 But the amount of Depo they're talking about
13 here is enough to fill the needle, not the syringe.
14 That's how much he was over. When I first talked
15 about it, I was worried about it. At the time, I
16 had another filly win a final. She got injected
17 the day after he got injected. She didn't have a
18 Depo find. Maybe some of it go out of the joint
19 and stayed under the skin and that's how he come up
20 minutely high.

21 He also insinuated because the horse raced so
22 bad in eliminations -- he run all over the track.
23 well, the track was this deep down there because
24 they hadn't raced on it. It was like a plowed
25 field. That horse couldn't get a hold of the

1 track. I had his shoes changed from the
2 elimination to the final, and I warmed him up in
3 two seven, which is very fast because he's an
4 erratic horse.

5 when you look at his runnings, he hasn't raced
6 much this year. It's either lameness or unruliness
7 is why he's not made any money or done any good,
8 and the day he won the final, I set out in the
9 middle of the track and held on to him and I had
10 changed his shoes and he got a hold of the track
11 better.

12 But the situation here, it's just not knowing.
13 Me not knowing. Maybe -- like I talked to a guy
14 that works for the USJA. I've been talking to him
15 about this, T.C. Lane. He's in charge of the
16 medications for the USJA, United States Jockey
17 Association. He said, unfortunately, now that
18 everything is turning to internet and email, you
19 have to catch up with the times. Then maybe I do.
20 I have never been that way.

21 Like I tell you, I can't turn my computer on at
22 home. Never use a computer. I have a flip-top
23 phone with no internet, and to me, with the small
24 program, I think the owners of the horses should
25 have been emailed fair warning, because I knew

1 nothing about this.

2 I'm from the state of Maryland. I race at
3 Ocean City. I race at Rosecroft. I race in
4 Delaware. I race in Pennsylvania. I ship to
5 Pennsylvania. All these places, I haven't had a
6 medication find ever, and this is slightly over
7 because of the circumstances where they changed
8 something that we didn't know about.

9 And if we had, they're stating that we should
10 go on the internet and check stuff like that.
11 well, who's thinking about that? I didn't hear it
12 from the other states they had changed their rule
13 until now, all this, you know.

14 I mean they started testing for cobalt last
15 year at Rosecroft, and they started testing before
16 they told the horsemen. Then two weeks later, they
17 told the horsemen that as of such-and-such date,
18 we're enforcing this if you get a cobalt, if you
19 get one or your horse does, which is the right way
20 to do things. They did it the right way so the
21 horsemen had time to adjust.

22 well, they didn't have that on the internet.
23 They come and told me in the paddock. They had a
24 meeting and told everybody that this is the way
25 it's gonna be.

1 well, I didn't receive any literature from
2 Virginia or anybody else saying that as of June 1st
3 Depo was a no-no, and that's what happened. I mean
4 that's the way it is.

5 We have some literature here from -- obviously,
6 they've had other problems with medication in the
7 state of Virginia with jumpers and high Depos, and
8 they let these guys go because of circumstances
9 citing the following: determined accurate
10 withdrawal dates for a controlled therapeutic
11 medication. I see Depo-Medrol. Two stewards'
12 rulings from this spring eliminating \$1,000 fines
13 of two trainers for spring violations from the
14 Virginia Racing Commission.

15 Obviously, this has happened and you've had a
16 conflict with this with Thoroughbreds because of
17 guys not knowing the guidelines on Depo-Medrol.

18 We're appealing this because it's not a little
19 money. The horse race was 43,000. Here's the win
20 picture. It's gonna cost her, along with me, and
21 to us, we're appealing it because we had no idea
22 that they had changed this.

23 And like I say, I'm not email, computer or
24 internet-wise to this, you know. If I'd have
25 known, it would have never happened.

1 And like I say again, we're not talking about a
2 big amount of cortisone. When you go to this
3 nanogram stuff, it's enough to fill up the needle
4 is what it come over, and that could easily, you
5 know, because I had horses checked the day after.
6 But that's what happened and that's why we're here,
7 and we're not talking \$1,000 or \$2,000. It's like
8 \$11,000 for her and she counts on this money to
9 make her year and that's why we're here.

10 If I'd had medication problems before with Depo
11 or something, we wouldn't appeal it because I know
12 what I can do and what I can't, and so do my vets,
13 and we injected this horse well far enough out.

14 We were giving ourselves 21 days. That was the
15 time, the day before eliminations, you know, for
16 this to be out of your system, and obviously, it
17 wasn't with this horse, because I had one win and I
18 had a couple finish second, and that morning had
19 her go to the box and I don't know. That's what
20 happened.

21 MR. PITCHFORD: Mr. Gray, do you want to offer
22 copies of anything you just referenced as an
23 exhibit?

24 MS. MCDONALD: This is the letter saying when
25 we gave the injections.

1 MR. GRAY: I'm sure you all are wise to this
2 stuff.

3 MS. MCDONALD: It's the ruling about the drugs
4 and about the reversals of the Virginia Racing
5 Commission for the Thoroughbreds for similar
6 amounts.

7 MR. GRAY: That was brought to us by a vet in
8 Kentucky. He practices in Kentucky and he emailed
9 us that paperwork.

10 MS. MCDONALD: Here's the winning picture. You
11 know, we're also talking about a non-betting race.

12 MR. GRAY: Yeah. It was a non-betting race.
13 It was an early race with a three-horse field.

14 MS. MCDONALD: You know, I breed these horses.
15 If I don't -- I'm trying to help the Virginia
16 program, but if you take my money away, you know,
17 we may not be able to.

18 MR. PITCHFORD: Okay. Just for purposes of the
19 record, I have marked as Exhibit E, a copy of the
20 letter from the vet. It's addressed to Virginia
21 Racing Commission, dated October 15, 2015. Marked
22 as Exhibit F, a Mid-Atlantic advisory concerning
23 Depo-Medrol --

24 MR. GRAY: May I say something?

25 MR. PITCHFORD: And Exhibit G is a copy of an

1 article from horseracing.com, July 1, 2015, and
2 then Exhibit H is the win picture.

3 You would like those admitted into the record,
4 Mr. Gray?

5 MR. GRAY: Yeah.

6 CHAIRMAN REYNOLDS: Do we need to make a
7 motion?

8 COMMISSIONER MILLER: Mr. Chairman?

9 CHAIRMAN REYNOLDS: Yes, sir.

10 COMMISSIONER MILLER: I know that the party was
11 anxious to testify, but I raise my point again. I
12 said he had the right to question the judge and a
13 right to question Dr. Harden, but he began
14 testifying again. We need to give him an
15 opportunity to question, not testify. Any question
16 you have for either of those two witnesses?

17 CHAIRMAN REYNOLDS: Do you have any questions
18 of either of the two witnesses?

19 MR. GRAY: No.

20 COMMISSIONER MILLER: Okay. Thank you.

21 CHAIRMAN REYNOLDS: When you concluded your
22 testimony, you said you had something you wanted to
23 say?

24 MR. GRAY: I don't know --

25 THE COURT REPORTER: I'm sorry. I can't hear

1 you.

2 COMMISSIONER MILLER: Speak up.

3 CHAIRMAN REYNOLDS: He just said he didn't know
4 what it was. Are we going to make a motion at this
5 point?

6 COMMISSIONER MILLER: What is the motion you're
7 seeking?

8 COMMISSIONER DAWSON: To enter the exhibits.

9 COMMISSIONER MILLER: Do we have copies to look
10 at?

11 CHAIRMAN REYNOLDS: We only have one copy, so
12 we don't have copies to look at. He can pass them
13 down.

14 COMMISSIONER VAN CLIEF: Are they short enough
15 to read so we can all hear what's in the exhibits?

16 CHAIRMAN REYNOLDS: Not really. Commissioner
17 Miller, you have more experience in these hearings
18 than I do. What's the protocol for admitting
19 exhibits?

20 COMMISSIONER MILLER: Well, you've asked for
21 the motion, but it's kind of strange to make a
22 motion to admit an exhibit. I have no idea what it
23 is. It could be a letter from Putin, you know. I
24 have no idea what the contents of the exhibit are.
25 I mean the title of them have been indicated, but

1 we need a chance to look at them to see whether we
2 think they're relevant and material, so we'll have
3 to take time to do that.

4 CHAIRMAN REYNOLDS: Yes.

5 COMMISSIONER DAWSON: Mr. Chairman, can I ask a
6 question? On the document, the notice to the
7 horsemen and veterinarians, who published this?
8 what publication?

9 MR. GRAY: It should be on there.

10 MS. MCDONALD: I got it all from the vet in
11 Kentucky.

12 COMMISSIONER MILLER: You have to speak up.

13 MR. GRAY: It's probably on one of those pages
14 who published it. I think it's on the first copy,
15 the first page.

16 COMMISSIONER DAWSON: I don't see any source on
17 here.

18 COMMISSIONER MILLER: She's talking about --
19 I'll speak louder. She's talking about the one
20 that's headed attention all horsemen and
21 veterinarians.

22 MR. GRAY: Yeah.

23 MS. MCDONALD: We got that from the Kentucky
24 vet after.

25 MR. GRAY: It was emailed to us by a vet in

1 Kentucky that practices there.

2 COMMISSIONER DAWSON: So you didn't originally
3 get this because --

4 MS. MCDONALD: No. We got it after we got the
5 positive.

6 DR. HARDEN: This was -- the letter you have
7 there, attention all horsemen and veterinarians,
8 this was put out by the Mid-Atlantic committee
9 trying to clarify some of the confusion that was
10 swirling around the use of Depo-Medrol, and I think
11 you got this from Dr. Roberts, Andy Roberts, of
12 Kentucky.

13 MR. GRAY: Yes.

14 COMMISSIONER MILLER: May I ask a question?

15 CHAIRMAN REYNOLDS: Yes, please.

16 COMMISSIONER MILLER: Dr. Harden --

17 DR. HARDEN: Yes, sir.

18 COMMISSIONER MILLER: -- did it clear up the
19 confusion -- without me reading it -- did it clear
20 up the confusion in your mind?

21 DR. HARDEN: Basically, what it says is that
22 any trainer who chooses to race a horse that has
23 been treated with Depo-Medrol despite this warning
24 should at his or her expense get the horse tested
25 prior to entering to ensure that the horse will

1 test below the limit of 100 picograms. That's the
2 bottom left page of the paragraph.

3 COMMISSIONER MILLER: All right.

4 DR. HARDEN: That is in essence consistent with
5 what our statement placed on the internet -- on our
6 website in July stated.

7 COMMISSIONER MILLER: Thank you. May I ask a
8 question?

9 CHAIRMAN REYNOLDS: Yes. Please ask.

10 COMMISSIONER MILLER: Sir, when did you get
11 this?

12 MR. GRAY: About a month ago when I got my
13 positive.

14 COMMISSIONER MILLER: Okay. Well, it's safe to
15 say you got this subsequent to the race in which
16 this horse ran?

17 MR. GRAY: Oh, yeah. Yeah.

18 COMMISSIONER MILLER: Okay.

19 COMMISSIONER DAWSON: This document also says
20 it will be enforced.

21 COMMISSIONER MILLER: May I ask another
22 question?

23 CHAIRMAN REYNOLDS: Yes. Ask all the
24 questions.

25 COMMISSIONER MILLER: Sir, are you saying that

1 this is the first you became aware of the fact that
2 the testing of the threshold 100 whatever it is --

3 MR. PETRAMALO: Picograms.

4 COMMISSIONER MILLER: -- picograms --

5 MR. PETRAMALO: A trillionth of a gram.

6 COMMISSIONER MILLER: -- in blood plasma will
7 be enforced? Are you saying this is the first you
8 ever heard of that?

9 MR. GRAY: Yes.

10 CHAIRMAN REYNOLDS: Dr. Harden, when did
11 this new regulation go into effect?

12 DR. HARDEN: Our regulation --

13 CHAIRMAN REYNOLDS: For this particular --

14 DR. HARDEN: Our regulation went into effect in
15 2014. The only change we had was on our website,
16 we clarified prior to June our website had went by
17 the RMTc recommendation, which was inject one joint
18 with 100 milligrams no closer than 21 days.

19 We have found that that recommendation was not
20 accurate, and so in July, we posted on our website
21 that we recommended you not use Methylprednisolone,
22 but our regulation, our rule had not changed. It
23 was merely the guideline accompanying that rule we
24 changed in July.

25 VICE CHAIRMAN VAN CLIEF: Mr. Chairman?

1 CHAIRMAN REYNOLDS: Yes.

2 VICE CHAIRMAN VAN CLIEF: Dr. Harden, could you
3 restate what our rule is? Seems there's a little
4 confusion here. We've got a recommendation it was
5 made in July on our website not to use the
6 substance, yet there is a rule on the books and
7 could you clarify that rule?

8 DR. HARDEN: The rule on the books states that
9 methylprednisolone -- now I'm paraphrasing the
10 rule, I don't have it written, but states that
11 methylprednisolone, one of the 26 controlled
12 substances on the RMTc list of medications, and
13 that the threshold for regulatory action would be
14 100 picograms per milliliter.

15 VICE CHAIRMAN VAN CLIEF: Is there a
16 recommendation with regards to withdrawal in that
17 ruling or a rule?

18 DR. HARDEN: We name it a guideline rather than
19 a regulation, and the guideline as of July of this
20 year was that we recommend you do not use it, or if
21 you do use it, have your horse tested to ensure
22 that he's below the level.

23 VICE CHAIRMAN VAN CLIEF: Was that guideline
24 and that recommendation promulgated only on our
25 website? Were there other efforts to make sure the

1 horsemen were aware of that? And second question,
2 the way we promulgate the information here in
3 Virginia, is that consistent with other
4 jurisdictions such as Maryland, Delaware, New
5 Jersey?

6 DR. HARDEN: We're consistent with the
7 Mid-Atlantic jurisdictions, with the exception of
8 Delaware harness. The harness group in Delaware
9 seem to operate differently with this one
10 particular substance, but we're consistent with
11 Pennsylvania, Maryland, New Jersey.

12 VICE CHAIRMAN VAN CLIEF: That's with regards
13 to both the rule and the way we give the
14 information out to horsemen?

15 DR. HARDEN: I don't fully know the guidelines
16 that are disseminated from all the other
17 jurisdictions, but this is consistent with the
18 guidelines in Pennsylvania and New York for sure
19 and --

20 VICE CHAIRMAN VAN CLIEF: Is the way we've been
21 distributing information for horsemen changed over
22 the last couple of years or is it the same?

23 DR. HARDEN: Primarily what has changed it is
24 as Mr. Gray said. Horsemen would show up at the
25 meet two or three weeks prior to the actual racing

1 and we had an opportunity to communicate with them
2 and intermingle with them and talk to them.

3 with our longer meets no longer occurring, the
4 horses show up a day before they're racing, so I
5 don't have the opportunity for personal
6 communication, and we don't have a system other
7 than posting on our website of how to modify that.
8 We don't send a mailing to everyone, so.

9 CHAIRMAN REYNOLDS: Mr. Gray.

10 MR. GRAY: I just want to say I have the utmost
11 respect for Dr. Harden. I've dealt with him for
12 years at Colonial, never had a problem. He was
13 always straight up with me. Whenever I asked him a
14 question and I was, you know, I would always go to
15 him as soon as I arrived.

16 When we were stabled at Colonial, I always had
17 a licensed vet down there doing my work, you know,
18 and she's always there when the meet started, too,
19 and he knows that I use -- Michelle MacDougall was
20 the licensed vet that I used.

21 But then again, we were always there, I was
22 always there. I was like the first one to move in,
23 you know, two and three stages to do then, and me
24 and a couple others that would be there right away
25 and I would talk to Dr. Harden.

1 I got a lot of respect for him. He's always
2 told me, you know, what I need to know, and when
3 they changed to the Kentucky lab, he gave me the
4 literature that I asked for and that's what I
5 abided by. That's what I gave my vet at home and
6 that's what we go by.

7 Like I say, if we had gotten notification of
8 this, to me, something should have been sent to my
9 owner stating warn your trainer that -- they're not
10 saying that you can't use, they said they recommend
11 that you don't use it on this letter, and to me,
12 that's, no, don't use it. Do you understand?

13 I can't use it in Pennsylvania, now we can't
14 use it at Oak. I wouldn't have used it. Point
15 blank period. It wouldn't have been used if
16 I knew this was going to happen. But we didn't.
17 I didn't know, you know. That's what happened, you
18 know.

19 CHAIRMAN REYNOLDS: I'll ask a question,
20 please. How are you notified in other
21 jurisdictions? Are other jurisdictions in the
22 Mid-Atlantic or wherever else you race, do they
23 mail you medication rules or do they rely on the
24 internet also to send that information to noticing
25 trainers.

1 MR. GRAY: Because I race in Maryland, some
2 other things they tell you. They have a meeting
3 and say this is the way it's gonna be.

4 CHAIRMAN REYNOLDS: Do you get anything in the
5 mail from these other jurisdictions regarding --

6 MS. MCDONALD: In Maryland, the Racing
7 Commission sends that stuff.

8 MR. GRAY: The Racing Commission, they send us
9 stuff saying it's gonna be changed. They sent me
10 this. This is their guidelines for Maryland, you
11 know.

12 CHAIRMAN REYNOLDS: They sent those to you in
13 the mail?

14 MR. GRAY: Yeah.

15 CHAIRMAN REYNOLDS: Are there other questions?
16 Yes, Commissioner Dawson.

17 COMMISSIONER DAWSON: Dr. Harden, I know that
18 the use of this medication is not uncommon in
19 racing and other kinds of horse things. How
20 unusual is it to use it on a three-year-old though?
21 I mean I don't know whether a three-year-old would
22 have conditions that would need joint injections.

23 DR. HARDEN: It's primarily used for arthritic
24 situations or wear-and-tear on the joints, and
25 ideally, a perfect horse would never need it. So I

1 would say it's used too commonly in
2 three-year-olds.

3 I personally would not like to see it used in
4 two- and three-year-old horses, but it is, and the
5 older the horse gets, the more frequently we see
6 it. So it's not unusual in a three-year-old, but
7 again, I would prefer not to have it.

8 COMMISSIONER DAWSON: In reading your document
9 here, you talk about the fact that it is a drug
10 that tends to linger a long time in the system, it
11 maybe differs by horse. In other words, one horse
12 would tend not to --

13 DR. HARDEN: There is some difference from
14 horse to horse, but there's probably much more
15 variation in the veterinarian's technique. When
16 the drug's administered, you go through skin,
17 through the joint capsule into a joint, and
18 ideally, you withdraw joint fluid of the same
19 volume of the Depo-Medrol that you inject. That
20 way, you haven't changed the size of the joint.

21 Some joints, particularly the distal hock, they
22 have a very, very tiny joint space. You cannot get
23 a cc of joint fluid out of these joints, so when
24 you inject, you increase the pressure within the
25 joint. Some of that medication may seep out of the

1 needle hole when you withdraw the needle and is
2 now subcutaneous, and it's the subcutaneous
3 administration that prolongs and raises the level
4 that we're seeing.

5 Another point is our guideline was based on
6 injecting one joint. You have X square inches of
7 joint capsule that can absorb the medication for
8 one joint. You go in to five joints, you now have
9 five times that joint surface that can potentially
10 absorb medication, so it's absorbed at a different
11 rate, and that's why our recommendation promulgated
12 by the RMTC says one joint, because that's the
13 protocol they used in determining that 21-day
14 number.

15 COMMISSIONER DAWSON: And in the case of this
16 horse, it was four joints; was it not?

17 MR. GRAY: Five.

18 COMMISSIONER DAWSON: Five.

19 MR. GRAY: He had both joints in his knees done
20 and the right hind ankle.

21 COMMISSIONER DAWSON: So that's a lot of the
22 medication.

23 DR. HARDEN: Well, I don't know the total dose.
24 I haven't seen the letter from the veterinarian.

25 MR. GRAY: It was one cc of Depo in each joint

1 along with acid, and I think it was, I think 20
2 milligrams of Depo.

3 COMMISSIONER DAWSON: Could we look it up and
4 see that? That was on September 15th. The race
5 day was October 15th?

6 CHAIRMAN REYNOLDS: Eighteenth.

7 COMMISSIONER DAWSON: That's longer than the
8 recommended interval period.

9 MR. GRAY: Yeah.

10 COMMISSIONER DAWSON: So I would suspect
11 Mr. Gray would have expected that medication wasn't
12 there any longer, but apparently it was.

13 MR. GRAY: Previous experience from all these
14 things, yeah. It really flabbergasted me when he
15 called me with this. I was flabbergasted.

16 COMMISSIONER DAWSON: Now on the other hand, we
17 also were given some documents showing that there
18 were some rulings by the National Steeplechase
19 Association on the same matter.

20 DR. HARDEN: Yes.

21 COMMISSIONER DAWSON: And even though in those
22 cases it was similar, the people didn't know about
23 the rule.

24 DR. HARDEN: There was a significant
25 difference. And this was considered a mitigating

1 circumstance by the board of stewards when they had
2 this hearing.

3 Prior to July, our recommendation was -- our
4 guideline, excuse me, was one joint 100 milligrams,
5 and we made a comment, a footnote below that said
6 that its use is problematic because it can be
7 detected for 21 days.

8 However in that particular case, the medication
9 was injected into the sacroiliac joint, but the
10 sacroiliac is not a true joint with a joint capsule
11 in it. So in effect, a large amount of the
12 medication injected into the sacroiliac joint in
13 effect becomes subcutaneous.

14 The tissues in that area are more akin to
15 subcutaneous tissue than within the joint space,
16 and this was the point of argument that I had and
17 others had relative to the sacroiliac joint, and
18 this is what prompted us to change our guideline in
19 July to say that we recommend you not use
20 methylprednisolone.

21 COMMISSIONER DAWSON: And when Virginia changed
22 its guideline, it was following some other states
23 that were doing that too?

24 DR. HARDEN: Yes. New York in January came out
25 with the same recommendation. Do not use

1 methylprednisolone.

2 COMMISSIONER DAWSON: At all?

3 DR. HARDEN: At all. And some states, and I'm
4 sorry I can't recollect exactly which states. Some
5 states were saying 60 days if it was in a joint or
6 90 days if it was in the muscle, and so there was a
7 lot of states were coming with guidelines all over
8 the map, and then basically, it got to be so many
9 possibilities, so many various different joints
10 that it could be injected, and muscles
11 subcutaneously.

12 I even understand there's a nasal mist that can
13 be used for upper respiratory issues of the same
14 drug, and all of these different permutations
15 became such that it seemed prudent to recommend
16 that you not use the medication.

17 COMMISSIONER DAWSON: And of course as most of
18 us know, cortisone does relieve pain, but it
19 doesn't necessarily cure anything.

20 DR. HARDEN: It relieves inflammation, which
21 subsequently may relieve pain, and the -- there's
22 not a curative effect other than eliminating
23 inflammation and allowing healing.

24 COMMISSIONER DAWSON: And it makes the horse
25 feel better. But in the meantime, trainers such as

1 Mr. Gray are operating under the 21-day
2 recommendation withdrawal, and in his case, didn't
3 know or says he did not know of the change. We've
4 already established that the VRC does not send out
5 written notices.

6 DR. HARDEN: Right.

7 COMMISSIONER DAWSON: It posts on the website,
8 however.

9 DR. HARDEN: I also in the -- I also
10 communicate with the private veterinarians or the
11 veterinarians that I anticipate being at the track.
12 Now we had two veterinarians from Kenbridge who
13 came to the track, and prior to the meet, I had
14 communicated with them and sent them our
15 regulations and guidelines, but I certainly
16 couldn't send it to every veterinarian in the
17 Mid-Atlantic area because there's too many of them
18 and I don't even know which ones are involved.

19 COMMISSIONER DAWSON: Do you know whether --

20 DR. HARDEN: I don't think this veterinarian
21 was a racetrack practitioner. I think she had a
22 general practice.

23 MR. GRAY: Yeah. She has a private practice.
24 There are no racetracks now that have a barn area,
25 you know, so she has her own business, her own

1 clinic and she travels.

2 COMMISSIONER DAWSON: So she wouldn't
3 necessarily be following race regulations such as
4 the VRC.

5 MR. TISHUK: What Dr. Harden just testified to,
6 that this also -- we're going under the premiss
7 that this positive was from the injection. He
8 also, he just mentioned in his testimony that it's
9 available in a spray.

10 I had two positives this summer where I worked,
11 and both trainers testified that they did admit it
12 was administered. It was administered in a spray.

13 So there's nothing saying here that -- he's
14 responsible for the care and custody of the horse.
15 There's nothing to say that two weeks before the
16 horserace that he did not administer it in a spray.
17 We don't know. We're going under the premiss that
18 it was injected, but he also has care and custody
19 of the horse. We have no idea what he did
20 subsequent to the horse being injected. It's
21 available in a spray, and the two that I had this
22 summer, both trainers testified it was administered
23 in a spray.

24 I think what we're losing sight of is, okay,
25 the horse, you know, there's withdrawals. It could

1 be overages in the joints. That the foundation of
2 positive tests, it's our trainers' responsibility.
3 He is responsible for that horse, no matter how it
4 got it.

5 And as far as whether he wasn't notified,
6 that's not our problem as far as making a ruling.
7 The thing is, it's the trainer's responsibility.
8 It's in your rule book. Under trainer, it says
9 duties. A person holding a permit allowing him to
10 participate in horseracing as a trainer shall be
11 responsible for the proper care, health, training,
12 safety and protection of the horse in her or his
13 care against administration of all substances
14 foreign and natural to the horse.

15 So I think that we're missing the fact that he
16 is responsible. This is the foundation of all our
17 rulings as far as positive tests go. He's
18 responsible for the care and custody of his horse.

19 They can bring in, you know, there's
20 withdrawals, there's -- Dr. Harden testified that
21 horses react differently. As far as this horse
22 from our ruling as far as I've always been -- the
23 evidence that the test came back positive and we
24 act on that particular --

25 CHAIRMAN REYNOLDS: You all considered the

1 mitigating circumstances that I'm sure Mr. Gray
2 probably shared with you as he shared with us
3 today?

4 MR. TISHUK: Right. As far as our concern,
5 there wasn't mitigating circumstances.

6 CHAIRMAN REYNOLDS: Right. And obviously, the
7 vet's letter --

8 MR. TISHUK: In fact, we did not have at that
9 time -- when he testified -- he did not have the
10 letter where the horse was administered. This is
11 the first time I've seen it. There was no letter.
12 In fact, when I asked him during our telephone
13 hearing the name of the veterinarian, he did not
14 know the name of the veterinarian.

15 MR. GRAY: Yeah. I did.

16 CHAIRMAN REYNOLDS: No, sir. No arguing.

17 MR. TISHUK: You said --

18 CHAIRMAN REYNOLDS: I'll give you a chance to
19 respond.

20 MR. GRAY: No. That's not the --

21 CHAIRMAN REYNOLDS: No arguing. Did you hear
22 me? I will give you a chance to respond, Mr. Gray.

23 MR. TISHUK: Mr. Lermond, Dave, was at the
24 hearing. He had trouble remembering the name of
25 the veterinarian.

1 MR. GRAY: No. I didn't have any trouble.
2 I'll tell you why.

3 CHAIRMAN REYNOLDS: All right. Hold on.

4 MR. LERMOND: In my notes, I wrote that it was
5 Dr. Beatrice somebody, but he didn't know the last
6 name.

7 MR. GRAY: It's hard to pronounce her last
8 name.

9 MR. TISHUK: So he did not know her name.

10 MR. GRAY: I did know her name.

11 CHAIRMAN REYNOLDS: Stop, please. Both of you.

12 MR. TISHUK: He didn't know the name.

13 CHAIRMAN REYNOLDS: Okay. That's fine. I'd
14 like to ask -- I'm gonna let Mr. Gray respond. Go
15 ahead and respond.

16 MR. GRAY: With talking to Dr. Harden about the
17 situation, he's the first one I talked to when I
18 called him on the phone before he had any evidence
19 of the positive. Did I not? Yes or no?

20 DR. HARDEN: Yes.

21 CHAIRMAN REYNOLDS: No, no, no.

22 MR. GRAY: He asked me who administered it, and
23 if I could get a letter stating that they injected
24 the horse on such-and-such a day, this would
25 probably go away is what Dr. Harden told me on the

1 phone.

2 I said I know who injected and when the horse
3 was injected. Now, her name is hard to pronounce.
4 I can't pronounce it. I talked to her twice a week
5 on the phone. She comes to my farm. Her name is
6 Intervich [ph], and I told him that. I said I
7 can't really pronounce her name because it is hard
8 to announce [sic].

9 But I did talk to Dr. Harden. Is that not what
10 you told me on the phone? He said could I get a
11 letter from the veterinarian who administered the
12 injection, and I said most certainly I can, and I
13 know when it was injected.

14 CHAIRMAN REYNOLDS: Okay.

15 MR. GRAY: You know, and I called her and she
16 said I will be more than happy to do this. And I
17 do know her name because I've been dealing with her
18 for five or six years. So that is uncalled for,
19 Mr. Paul.

20 CHAIRMAN REYNOLDS: All right.

21 VICE CHAIRMAN VAN CLIEF: Mr. Chairman, can I
22 ask the presiding judge a question?

23 CHAIRMAN REYNOLDS: Yes.

24 VICE CHAIRMAN VAN CLIEF: You made reference
25 earlier in your testimony to other jurisdictions

1 and how they handled this, similar infractions with
2 \$1,000 fines and forfeiture of the purse. Were you
3 referring to -- that was not with reference to
4 Mr. Gray, was it? You made mention of infractions
5 in other states.

6 MR. TISHUK: Right. I have copies of the other
7 rules.

8 VICE CHAIRMAN VAN CLIEF: He was not the
9 trainer?

10 MR. TISHUK: No.

11 VICE CHAIRMAN VAN CLIEF: Okay.

12 MR. TISHUK: If you want to see those, one is
13 from Pennsylvania and one is from Maryland.
14 Different trainers.

15 COMMISSIONER VAN CLIEF: They were different.

16 MR. GRAY: Can I ask him a question?

17 CHAIRMAN REYNOLDS: No. You can ask me the
18 question and I'll ask him. I just don't --

19 MR. GRAY: Okay. I'll just --

20 CHAIRMAN REYNOLDS: You can ask me and I'll ask
21 him.

22 MR. GRAY: No. I was just going to ask him if
23 -- there was trainer in Maryland that I talked to
24 the other day that had a Depo positive, and he said
25 that he had purchased the horse. The horse had

1 been injected before he purchased him and he got
2 the same thing. He came up with a high Depo and
3 it's the same fine, \$1,000 fine, but he said that
4 he got the fine knocked in half to \$500.

5 MR. TISHUK: Who was that?

6 MR. GRAY: Greg (inaudible)

7 MR. TISHUK: I have no idea.

8 CHAIRMAN REYNOLDS: We're here to concentrate
9 on this case. Do you have any more questions,
10 Mr. Vice Chairman?

11 VICE CHAIRMAN VAN CLIEF: No.

12 CHAIRMAN REYNOLDS: Mr. Tishuk, obviously, you
13 have the letter saying that the vet injected the
14 Depo on September 15th. It is possible that, you
15 know, maybe there was a spray or something; we
16 don't know that. We know that the horse raced on
17 October 18th and then tested positive. The period
18 where the drug should be totally out of the system,
19 is that 21 days? Is 21 days the normal cleansing?

20 DR. HARDEN: Twenty-one days is the normal
21 elimination period for one joint.

22 CHAIRMAN REYNOLDS: One joint. We've been
23 talking about five joints.

24 DR. HARDEN: Yes.

25 CHAIRMAN REYNOLDS: Even if it's in five

1 joints, would that mean it might take longer to get
2 out of the system?

3 DR. HARDEN: We don't know. Yes, I would
4 presume so, but we don't know because there hasn't
5 been research done with five joints. You would
6 have to do research for seven joints and three
7 joints and for 11 joints. So the research is
8 expensive. It just has not been done with all the
9 various permutations. The guideline research was
10 done with 100 milligrams, one joint.

11 CHAIRMAN REYNOLDS: Thank you.

12 COMMISSIONER DAWSON: Mr. Chairman.

13 CHAIRMAN REYNOLDS: Yes, ma'am.

14 COMMISSIONER DAWSON: Another point, and that
15 is, I think there's been improvements in detection
16 by the laboratories in terms of how sensitive their
17 testing is now.

18 DR. HARDEN: Yes, ma'am. Yes.

19 COMMISSIONER DAWSON: So it could be that a lot
20 of these horses didn't come up positive because the
21 lab tests weren't quite that sophisticated.

22 DR. HARDEN: Our lab has been able to detect
23 this for several years.

24 COMMISSIONER DAWSON: Okay.

25 DR. HARDEN: However, other jurisdictions use

1 other labs and some labs are not as proficient, and
2 that has created, again, some of the confusion,
3 because a trainer might be getting away with it in
4 one jurisdiction, but then all of a sudden, he's
5 caught with it because of a different laboratory.

6 COMMISSIONER DAWSON: Thank you.

7 CHAIRMAN REYNOLDS: Other questions from the
8 commissioners? Commissioner Miller?

9 COMMISSIONER MILLER: Mr. Chairman, having
10 reviewed the exhibits offered by the petitioner,
11 and since no one has objected to their entry,
12 although Exhibit G is incomplete because each
13 paragraph has the ending portion of it cut off, I
14 move that for what they're worth, that all those
15 exhibits be admitted to the record.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER DAWSON: I second.

18 CHAIRMAN REYNOLDS: Hearing the motion and
19 second, all those in favor, say aye.

20 NOTE: The commissioners vote aye.

21 CHAIRMAN REYNOLDS: Those opposed? The
22 exhibits are admitted.

23 All right. So there are no more questions from
24 commissioners.

25 COMMISSIONER DAWSON: I just have one and I'd

1 like to ask Mr. Lermond. I know in other
2 medication hearings such as this that we've had,
3 there's always this, you know, I don't know how it
4 happened kind of thing. But we've always
5 maintained that it is the trainer's responsibility,
6 and that if it's a positive, it's a positive.
7 would you say that's true?

8 MR. LERMOND: That's correct. It's the
9 absolute and sure rule. Someone's got to be
10 responsible, and horse racing has always said it's
11 the trainer. Recently, they said maybe we should
12 hold the owners responsible, but that never gets
13 very far, so they always come back to that, it's
14 the trainer's responsibility.

15 COMMISSIONER DAWSON: The background is, the
16 purpose is we need to protect the public to make
17 sure that the racing industry is honest.

18 MR. LERMOND: It protects the wagering public
19 and also protects the owners of the other horses in
20 the race to ensure that this horse didn't have an
21 unfair advantage over the other horses that didn't
22 test positive.

23 COMMISSIONER DAWSON: And also the health of
24 the horses.

25 MR. LERMOND: Exactly. That's very important.

1 COMMISSIONER DAWSON: That's all I have,
2 Mr. Chairman. Thank you.

3 CHAIRMAN REYNOLDS: Okay. Yes, Mr. Gray.

4 MR. GRAY: I, and she'll verify this. You can
5 go in my barn. There's not a bad-looking horse. I
6 tirelessly worked at that barn 12 to 16 hours a
7 day, seven days a week and they're my life. I
8 treat them as if they were my kids.

9 I would not do anything to harm a horse, and to
10 me, racing a lame horse is more dangerous than
11 those animals. That's what I'm saying. I don't --
12 and as far as the Kentucky lab is probably the best
13 lab in the country, they say, but that's the best
14 testing lab in the country, don't you say, Dr.
15 Harden?

16 DR. HARDEN: Yes.

17 MR. GRAY: So those were the guidelines we went
18 by and the vet administered it on that day, and if
19 we had known, like I said, if I had known -- yes,
20 it is the trainer's responsibility and I'm
21 responsible for all my horses. That's why I work
22 all day tirelessly to take care of them. They all
23 look good. They're all healthy animals, and she'll
24 testify to that.

25 She took the horse from another trainer because

1 they didn't take care of them. If you look out for
2 the welfare of the horse -- I would do nothing to
3 endanger any of them and that's just the way it is.
4 And like I said, if I had known, then we would have
5 never administered any Depo to them.

6 I will say this. That if you ask any vets,
7 Depo, they prefer Depo over stuff that they have to
8 use now, because they think it's safer and better
9 for the horse. But they made it so you can't use
10 it, so now they're -- if you ask nine out of ten
11 vets that practice, and they'll say they don't like
12 the stuff they have for them now. They don't think
13 it's as safe as Depo for the horse. But that's
14 just the way it is. They have to use -- they can't
15 use it anymore.

16 Like I said, if I had known then, we wouldn't
17 use it. Yes. I'm responsible for the horse, and I
18 take full responsibility, but I don't do -- and
19 this wasn't a performance-enhancing thing. It
20 wasn't like I was doping the horse, blood doping
21 him. The horse had a high Depo because I didn't
22 know the -- as of July 1st, I didn't know and
23 that's what happened.

24 COMMISSIONER VAN CLIEF: I have one more
25 question, if I might.

1 CHAIRMAN REYNOLDS: Yes, sir.

2 COMMISSIONER VAN CLIEF: This would be for our
3 executive secretary.

4 MR. HETTEL: Yes, sir.

5 COMMISSIONER VAN CLIEF: Seems to me that there
6 is much question, trainer is responsible, there was
7 a positive, it was an excess of the 100 picogram
8 parameters, and appears the only question is
9 whether or not he was using his best efforts to
10 operate within what he believed to be the
11 promulgated guidelines.

12 Bernie, if I get this right then, the 100
13 picogram limit is on the books, the 21 day withdraw
14 is on the books as a recommendation.

15 MR. HETTEL: Guideline.

16 COMMISSIONER VAN CLIEF: Guideline, I should
17 say. And we changed that with an email last July.
18 In the past when we have, if we have made
19 recommendations that are different from the rules
20 and guidelines that are on the books, what
21 methodologies have we used, if anything, other than
22 our website and email, and has that always been
23 sufficient to get the word out in the past?

24 MR. HETTEL: Well, of course, the new normal is
25 with no racetrack, we now have nothing but chip-in

1 meets. Dr. Harden alluded to earlier it's
2 impossible to contact every veterinarian on the
3 eastern corridor on what is going on.

4 Generally, people who work at racetracks
5 communicate internally, as you know, having
6 experience, and it becomes a workable common
7 knowledge. Within all of this, we've done our due
8 diligence to inform as many people as sufficiently
9 and efficiently as we can, but now there is this
10 complication with this new medication.

11 I think the complication also is here of five
12 joints and the amount, rather than a joint. It
13 certainly complicates this case.

14 It's regrettable for everybody involved;
15 nonetheless, on the report of the official testing
16 laboratory, there's an excessive amount. Metabolic
17 rate, time of day, horse's ingestion of food,
18 horse's elimination, use of Lasix; multiple
19 circumstances are involved in this, but we did,
20 obviously, do our best to inform everybody who was
21 participating.

22 COMMISSIONER VAN CLIEF: Thank you.

23 CHAIRMAN REYNOLDS: All right. Anymore
24 questions? Mr. Gray.

25 MR. GRAY: Our opinion on this is with the

1 amount of horses that race in the state of Virginia
2 and in the state program, that even if every owner
3 had been emailed or sent something sixty days prior
4 to the meet down there stating this, then it would
5 have never happened.

6 You know, so we had no -- and as far as the
7 five joint thing they come up with, previous years,
8 I know Dr. Riddle, he practices in Rising Sun,
9 Maryland. A very good vet. He's got a good
10 reputation. He says it doesn't matter if you do
11 one or six joints in a horse. The withdrawal time
12 should be the same on those horses, because I
13 checked with him about it. It doesn't matter.

14 And we were leaving ourself 21 days and that's
15 what happened. I know more horses than there was
16 in the program. If she had been even emailed. She
17 gets her email every day and I talked to her every
18 other day. She would have told me, Mark, hey,
19 look. You can't use Depo down there, and that
20 would have been it, point blank period, which we
21 have done because I don't want problems.

22 CHAIRMAN REYNOLDS: Okay. Thank you.

23 COMMISSIONER MILLER: Mr. Chairman.

24 CHAIRMAN REYNOLDS: Yes, sir.

25 COMMISSIONER MILLER: I'll ask a question of

1 the Racing Commission staff, any of which can
2 answer. If this was on the books in a certain
3 manner and as of July 1, June 1, there was a change
4 --

5 MR. GRAY: July.

6 COMMISSIONER MILLER: July; is that correct?
7 July 1?

8 DR. HARDEN: July 15 or thereabouts.

9 COMMISSIONER MILLER: Okay. July 15. At that
10 time, was this trainer licensed to be a trainer in
11 Virginia?

12 DR. HARDEN: No, sir.

13 COMMISSIONER MILLER: Do you send emails of
14 changes to all licensees of the Commission when you
15 have a change in a rule or regulation?

16 DR. HARDEN: No, sir. Not to my knowledge.

17 COMMISSIONER MILLER: How are all of your
18 licensees notified of changes in rules or
19 regulations?

20 DR. HARDEN: In the Thoroughbred side, I'm
21 usually in communication with Mr. Petramalo, and he
22 takes care of the HBPA people by posting on his
23 website. And I'm not sure if you have other
24 communications that you do with the Thoroughbred
25 side.

1 On the harness side, I have very clearly been
2 in communication with Dr. Dunavant, who was the
3 president of the Virginia Harness Horsemen's
4 Association, so he was fully aware of the
5 situation.

6 Now, my personal feeling is that the various
7 breed organizations should disseminate all of the
8 information to their members.

9 COMMISSIONER MILLER: May I ask a question of
10 Mr. Gray?

11 CHAIRMAN REYNOLDS: Yes.

12 COMMISSIONER MILLER: Are you a member of the
13 Virginia Harness Horsemen's Association?

14 MR. GRAY: No. She is.

15 COMMISSIONER MILLER: Is the owner of the horse
16 --

17 MS. MCDONALD: I am.

18 COMMISSIONER MILLER: Are you a member of the
19 Virginia Harness Horsemen's Association?

20 MS. MCDONALD: I am.

21 COMMISSIONER MILLER: Did you get anything from
22 the VA Harness Horsemen's Association relating --

23 MS. MCDONALD: I didn't.

24 COMMISSIONER MILLER: -- or from Dr. Dunavant
25 relating to this change?

1 MS. MCDONALD: I did not.

2 COMMISSIONER MILLER: That's all.

3 CHAIRMAN REYNOLDS: Thank you. Any other
4 questions? Commissioners ready to act or do you
5 all need some time to think? All right. Well,
6 thank you all very much for your testimony. Thank
7 you all.

8 I'm now gonna ask the commissioners to vote on
9 whether we're going to uphold or reverse or perhaps
10 hear a motion to modify the stewards' ruling on the
11 trainer Mark Gray matter, VRC permit number 3694.

12 Commissioner Miller, do you vote to uphold or
13 reverse or do you give me a motion to modify or
14 should I call --

15 COMMISSIONER MILLER: Well, the performance of
16 the licensee -- I'll make my speech and then I'll
17 shut up. The performance of licensees in Virginia
18 seems to be pretty good, the general licensees.
19 All licensees of the Virginia Racing Commission
20 seem to comport with our rules and regulations and
21 statutes, in that 99.9 percent of the time, the
22 races occur and there's no violations.

23 It's a harsh reality and a harsh result in some
24 instances, but a licensee is responsible to comport
25 with all rules, all regulations, all statutes, and

1 to be knowledgeable of the same, especially prior
2 to any specific execution of their privilege under
3 the license; that is, to run a race.

4 It's harsh in this case, I think, because it's
5 unclear from the testimony about whether specific
6 knowledge of this change in enforcement was relayed
7 to this licensee, but the licensee has a
8 responsibility prior to executing their privileges,
9 as I say, to check and double check.

10 Because of that, and the fact that the degree
11 of drug was found in the system of this horse after
12 the race, and in accordance with our rules and
13 regulations, the stewards did what they had to do,
14 and apparently, they could have fined up to
15 \$10,000. They chose to mitigate it to 1,000, and
16 it's harsh to do so, but I think at this point with
17 what we've heard, I would have to uphold the ruling
18 of the stewards.

19 CHAIRMAN REYNOLDS: Thank you, Commissioner
20 Miller. Commissioner Dawson.

21 COMMISSIONER DAWSON: Yes. I agree with
22 Commissioner Miller that we do have to uphold this
23 ruling. However, I would like to say that I
24 question whether Mr. Gray has any real culpability,
25 except that of course what we've already heard,

1 that each trainer has a responsibility to -- for
2 what happens to a horse while it is in his care.

3 This is all regrettable. I wish for his sake
4 and the owner's sake that it hadn't happened, but
5 it did, and we do have to uphold our regulations,
6 and in fairness to everyone else that holds
7 licenses in this Commonwealth, and as much as I
8 hate to say it, I think that's our responsibility
9 as members of this Commission to uphold the
10 regulations that we have elected to put on the
11 books, and I agree that everybody doesn't have
12 internet access, but it's available if you look for
13 it, and I think in this case, it's a good lesson
14 for everyone else. Look up and see what
15 regulations may have changed before you send your
16 horse to race.

17 CHAIRMAN REYNOLDS: Thank you. Commissioner
18 Steger.

19 MR. STEGER: Yes, Mr. Chairman. I think about
20 this in terms of the precedent it might set as to
21 how other laws in the Commonwealth are enforced. I
22 think -- and I have empathy with the trainer and
23 the owner. It's a difficult problem to resolve,
24 but I think at the end of the day, it is the
25 obligation to know the law, and as a result, I

1 would move to uphold the ruling.

2 CHAIRMAN REYNOLDS: Thank you. Vice Chairman
3 Van Clief.

4 VICE CHAIRMAN VAN CLIEF: Mr. Chairman, I, too,
5 am sympathetic in this case, but I would mirror the
6 opinion of my colleagues and vote to uphold and
7 make the comment that unfortunately, this is a good
8 example why uniform rules across state lines are
9 something we ought to be striving for in the
10 future, but I vote to uphold.

11 CHAIRMAN REYNOLDS: Thank you. And I also
12 empathize. I reiterate the comments of my fellow
13 commissioners. I think it's -- I feel badly for
14 you all, but you know, at the same time, we need to
15 uphold these medication rules. We're falling in
16 line with the national community, especially when
17 the Mid-Atlantic states come up with uniform
18 medication standards, and I think it's important
19 that we uphold those.

20 And I know there were some mitigating
21 circumstances that we don't have the test barn down
22 at Colonial Downs; we're ship-in now. There's a
23 transition going on in Virginia, which is,
24 unfortunately, the way you kept up with medication,
25 it didn't work for you.

1 I hope that you will have the ability and the
2 willingness to go and get on the internet, because
3 that's definitely where the world's going, and I
4 hope you'll do that.

5 I'm sorry. I'm gonna have to uphold this as
6 well. I just think medication is terribly
7 important. It's probably the number one issue
8 nationally in horse racing right now. Getting
9 everybody uniform around the country is job one,
10 and that's what we're all trying to do, but with my
11 vote, that this Commission unanimously uphold the
12 stewards' decision on this ruling.

13 Thank you all for coming in. I know it's not
14 what you wanted to hear, but we appreciate you
15 coming in here and speaking with us today with your
16 appeal. Thank you. With that, the commissioners
17 made their decision.

18 Do we need a ten-minute break?

19 MR. HETTEL: I think that would be helpful,
20 don't you think?

21 COMMISSIONER VAN CLIEF: Do we need a motion?

22 CHAIRMAN REYNOLDS: I don't think we need a
23 motion to have an informal five-minute or
24 ten-minute break.

25 COMMISSIONER MILLER: well, let's have a

1 ten-minute break. That's a motion.

2 CHAIRMAN REYNOLDS: Ten minutes sharp.

3 NOTE: There is a recess from 11:23 a.m.
4 until 11:49 a.m.; thereafter, the meeting continues
5 as follows:

6 CHAIRMAN REYNOLDS: Let's continue. We didn't
7 formally adjourn, so we'll pick up where we left
8 off, please. Next on the agenda is the
9 Administrative Process Act hearing. We are here to
10 talk about TwinSpires' advance deposit account
11 wagering license.

12 MR. HETTEL: Mr. Chairman, this is a
13 continuation of last month's meeting. Prior to
14 that meeting last month, there was some productive
15 discussions prior to the meeting. Since that time,
16 there's been numerous, numerous emails and
17 conversations amongst the parties involved.

18 For your information, the packet that has been
19 distributed, this big packet is what we had
20 prepared from last month's meeting, and if you'll
21 follow along.

22 we have Mr. Blackwell here from TwinSpires.
23 This was all started by Mr. Blackwell in Churchill
24 Downs' letter to me of August 14 saying they --
25 hold on. There's one for every commissioner. Now

1 they're passed down. Okay.

2 Mr. Blackwell on August 14th through a letter
3 from his general counsel informed me that they
4 would not continue to pay the five percent to the
5 Virginia horsemen, four percent to the Virginia
6 Equine Alliance, one percent to the Virginia
7 Breeders, based on what he believes is an illegally
8 tariffed and discriminatory act by the state --
9 government by the General Assembly.

10 He's here today to discuss this and we will
11 hear from he and other respondents.

12 CHAIRMAN REYNOLDS: Okay. Do they need to be
13 sworn in?

14 MR. HETTEL: Yes.

15 CHAIRMAN REYNOLDS: Okay. Would you like to --
16 everybody that is going to speak during this, would
17 they stand up and be sworn in, please.

18 NOTE: The witnesses are sworn
19 collectively.

20 MR. PITCHFORD: One more housekeeping matter
21 before we get started. As the executive secretary
22 referenced, we have a stack of exhibits that are
23 prepared. Exhibit A is a letter dated October 14,
24 2015, from the executive secretary to general
25 counsel for Churchill Downs, Incorporated,

1 concerning this issue.

2 Exhibit B is a letter dated November 12, 2015,
3 from the executive secretary to Mr. Blackwell.

4 Exhibit C is a letter dated August 14, 2015, from
5 the general counsel of Churchill Downs to the
6 executive secretary. Exhibit D is a letter dated
7 September 11, 2015, from the executive secretary to
8 the general counsel of Churchill Downs,
9 Incorporated, and Exhibit E is the transcript of
10 the Commission's meeting of July 1, 2015, which
11 contains a discussion of the same issue that we're
12 here to talk about today.

13 CHAIRMAN REYNOLDS: All right. Are these the
14 same exhibits as we used at the last meeting?

15 MR. PITCHFORD: Yes.

16 MR. HETTEL: Yes.

17 CHAIRMAN REYNOLDS: Do we need to reenter them
18 again today?

19 MR. HETTEL: I don't think so. I think it's a
20 continuation because we had deferred this action
21 until today's meeting, so I think we can proceed
22 legally. I had this discussion with Josh Laws, so
23 you're in good shape.

24 CHAIRMAN REYNOLDS: Okay. I'll open the floor
25 up to Mr. Blackwell.

1 MR. BLACKWELL: Sure. I'm Brad Blackwell on
2 behalf of TwinSpires. First of all, thank you for
3 the opportunity to be here today to discuss this
4 issue. Unfortunately, it's an issue that really
5 started back in the 2008 range. I'll make some
6 references to that later.

7 with regards to our position earlier this year
8 to stop payments to certain groups, it was based on
9 a concern of the constitutionality of those
10 payments.

11 we feel that the payments in question violate
12 the U.S. Constitution, in that the Virginia ADW law
13 and the economics that it dictates discriminates
14 against out-of-state producers of races to the
15 benefit of instate producers of races, and in fact
16 back in 2008 when the parties who pushed the
17 legislation were discussing the matter, it was
18 clear that the law was passed in an effort to
19 suppress what out-of-state tracks could charge for
20 their signals going in to Virginia via interstate
21 commerce.

22 The payments in question also impose an undue
23 burden on ADWs and the stream of commerce of taking
24 out-of-state races, bringing them in to Virginia
25 for the consumption by Virginia residents.

1 The reason we cut off the payments in addition
2 to those concerns was in the interest of bringing
3 the parties to the table to try to work through a
4 deal.

5 We actually attempted that without stopping
6 payments by reaching out to a number of the parties
7 in question, scheduled meetings, discussed our
8 concerns, discussed efforts to try to move forward,
9 and in our view, those efforts were not met with
10 the proper cooperation in order to get something
11 done.

12 To that effect, we felt that cutting off the
13 flow of money tends to get people's attention and
14 brings them to the table, so that did work for a
15 while.

16 We went through the issues and probably
17 disagreed on as many things as we agreed upon, but
18 worked in the interest of trying to establish
19 something that works for everyone.

20 We were set to have this very hearing last
21 month, as was suggested. The reason we did not was
22 that we were assured at the time by Mr. Petramalo
23 that we could reach a deal. There was an offer
24 made to us at the time that we said would not work.
25 Mr. Petramalo understood that it would not work.

1 Mr. Hettel was present for this, and the decision
2 was made to have a follow-up meeting to try to work
3 from that.

4 what we found was we didn't really see any
5 movement from there, despite our efforts to make
6 movement to get something done, so we still didn't
7 feel like there was certain cooperation on the
8 issue.

9 One of the other things that I certainly want
10 to touch upon is kind of the problem. The
11 underlying problem is that the economics don't
12 work. The Virginia model takes eleven-and-a-half
13 percent out of take-out. And so not to be
14 insulting to anyone, but in the horse racing
15 industry, the amount of revenue that is available
16 to the entire industry is defined by state statute
17 by the tracks running. It says this percent, which
18 is typically blended to be 20 percent of all
19 wagers, goes back to the industry to compensate the
20 industry.

21 Historically, that money is split between the
22 track and horsemen and running the show and putting
23 on the wagering or putting on the racing that's
24 wagered upon and the outlet that is taking those
25 wagers, servicing the customer and making those

1 wagers available to the customers.

2 The model that was presented by Virginia took
3 eleven-and-a-half of that blended 20 percent off
4 the table and put it in the hands of instate
5 Virginia racing interests, which ultimately is to
6 the detriment and burden of out-of-state producers
7 of content and the ADW companies in this situation
8 who are bringing the wagering to Virginia
9 customers.

10 When we look at this, those two entities have
11 traditionally been the ones who have been
12 compensated, if not all, but the majority of the
13 money available, because they are incurring the
14 cost and putting on the show that is being wagered
15 upon. They are making those signals available to
16 customers. They're acquiring the customer,
17 servicing the customer and incurring all of the
18 cost associated with that.

19 The problem is the Virginia model does not
20 leave enough for those entities to be properly
21 compensated and to create a sustainable business
22 model.

23 Part of this problem, again, is that when this
24 law was passed, it was done somewhat by those
25 parties that benefited the most from it.

1 And Mr. Miller, if I may, I want to quote you
2 back in 2008 when this law first came into place.
3 This was from a 2008 Virginia Racing Commission
4 meeting, and Mr. Miller said, I quote: I just want
5 to state for the record and make sure this gets in
6 the minutes. I'm deeply disappointed at the
7 virginia legislature. I may be wrong, but I can't
8 believe that they passed a bill of this impact with
9 so little exploration of the facts. If they would
10 have brought this gentleman in there, perhaps, and
11 probably a myriad of other people dealing with
12 racing nationwide and the complexity of this issue
13 of source marketing fees, together with the host
14 fees and the problems that are encountered
15 nationwide, I'm quite certain with their high
16 degree of intelligence that exists in Virginia
17 legislature, they would have reached a different
18 result. And now I wash my hands of all their
19 motivation.

20 As I'm also looking at this problem, we have
21 been, unlike the entities that we have been
22 negotiating against, trying to include the
23 industry, trying to include the Racing Commission
24 in the solution because we feel like, one, that it
25 requires cooperation. We think that it is, two,

1 something that is required by the Interstate Horse
2 Racing Act.

3 When the Interstate Horse Racing Act was passed
4 by Congress, Congress said that the stated fact of
5 that purpose was to ensure that states cooperate
6 with one another with regards to legal wagering.

7 As we look at the Virginia model, we do not
8 think that the Virginia model cooperates with other
9 states. We certainly think that it places an undue
10 burden on the flow of commerce coming in to
11 Virginia.

12 One other point of interest to me is that when
13 I look at the Virginia Racing Commission website
14 and there's a vision set out for the Racing
15 Commission, it says that the Commission is to be a
16 model to which other racing commissions aspire,
17 with a history of excellence and integrity.
18 Participants will find our processing systems to be
19 one of the most efficient and innovative in the
20 industry. Regulations will be easily understood
21 and applied to enable horse racing and wagering at
22 the highest standard of integrity and fairness.

23 I have to highlight fairness here, but I really
24 think that is what is at issue here, that there has
25 to be a fair model that works for everyone.

1 The fact of the matter is that out-of-state
2 racing and the ADW companies, all of which who are
3 out-of-state, are generating all the revenue that
4 exists in Virginia for horse racing and all those
5 being distributed, and we feel like those
6 participants should receive a fair value for those
7 involvements in the state.

8 The last point I really want to bring up, too,
9 is that we actually have a payment dispute of our
10 own here in Virginia. There was a time starting
11 last year where Colonial Downs surrendered their
12 license. We were looking at how the Virginia
13 racing industry was changing, and one of the things
14 that we identified to the Racing Commission and we
15 identified to the Attorney General's office was
16 that we, and I think we had similar thoughts by
17 Colonial Downs, was that the Virginia HBPA was not
18 the recognized horsemen's group. We questioned
19 that and suggested that we should withhold payments
20 similar to what EZHorseplay did, because we did not
21 feel like that group was recognized.

22 We feel like that period of time went from at
23 least probably November until July 1st when this
24 continued new ADW law was passed and there was
25 another provision that served in that law that says

1 there is now a mechanism in place to recognize that
2 horsemen's group, and I think this Commission
3 actually recognized that group.

4 Certainly, we take objection to having made
5 those payments of that period of time when we feel
6 they weren't properly recognized and entitled to
7 those payments. Accordingly, we feel like that
8 group was unjustly rich during that period of time,
9 and that period of time may go back as far as
10 January of 2014, when we understand they did not
11 have a contract in place with Colonial Downs.

12 So that's something else we certainly again
13 pointed out through numerous communications to both
14 the Racing Commission and the AG's office.

15 At this, you know, I'm sure we'll hear from
16 some of the other parties involved, but our
17 position is really as an entity that's been
18 licensed in Virginia since 2007, as an entity that
19 has made significant contributions to Virginia
20 racing, to the Virginia Racing Commission, who has
21 serviced and provided a valuable product to
22 Virginia residents as a company who has associated
23 with tracks who provided product to the state of
24 Virginia for purposes of encouraging interest in
25 our industry, for driving quality racing to be

1 wagered upon which has provided, again, a flow of
2 money to Virginia.

3 We ask to continue to work and cooperate with
4 the Virginia Racing Commission, but we feel like
5 it's a point where we really need some leadership
6 on this issue. We're certainly willing to step
7 outside with, you know, a representative of the
8 Commission and the parties that we have been trying
9 to negotiate with, in the interest of knowing that
10 we have exhausted our process here, and we
11 certainly look towards the Racing Commission for
12 that help and for that guidance. Thank you.

13 CHAIRMAN REYNOLDS: I don't know if you want to
14 start with questions with him or just hear from
15 everybody and then do the questions.

16 MR. HETTEL: I think once we get all the issues
17 on the table and then ask for specifics.

18 CHAIRMAN REYNOLDS: Okay. Mr. Petramalo.

19 MR. PETRAMALO: Where to start? Since 2010, I
20 think, the first full year of the new law,
21 the new law required TwinSpires to pay
22 eleven-and-a-half percent. That eleven-and-a-half
23 percent remained in Virginia to take out, as
24 Mr. Blackwell suggested, generally 20 percent. So
25 eleven-and-a-half was staying here in Virginia and

1 eight-and-a-half was going to Mr. Blackwell's
2 company.

3 But since that time through the present,
4 Churchill has never ever paid eleven-and-a-half
5 percent because of agreements with the then track
6 operator, Colonial Downs, and my organization and
7 the harness horse organization, the statutory ten
8 percent of the eleven-and-a-half that came to us,
9 we rebated to them two-and-a-half. So for the last
10 seven years, they've been paying nine percent.

11 Now, interestingly, over that period of time
12 from 2010 when their handle in Virginia was \$11
13 million, it has doubled. For the first 11 months
14 of this year, they've handled \$24 million, so
15 they've done very well by Virginia.

16 Now, they continued paying us after Colonial
17 Downs shut down, so we were paid for the end of
18 2014 and through September of this year, and during
19 that time, we were living up to our deal. We were
20 rebating to them. So if he's asking for -- he's
21 asking for the money back, I'm saying, fine, you
22 give us our money back, too.

23 But in any event, willy-nilly in October, they
24 stopped paying us. They didn't pay us for October.
25 Didn't pay us for November. The sum total that's

1 owed to us is \$189,268.

2 Now what's interesting here, is I've listened
3 to Mr. Blackwell and I've heard this many, many
4 times before how unfair the legislation is, how
5 it's unconstitutional, et cetera. But from a
6 lawyer's standpoint, that's all well and good, but
7 it does not excuse TwinSpires from complying with
8 the law.

9 They may not like the law, but the remedy isn't
10 to disobey it. The remedy is to go to the
11 legislature and say please change it, or if they
12 believe it's unconstitutional, the federal
13 courthouse is at the corner of 9th and Broad. But
14 they can't just on their own decide we're not gonna
15 follow the law.

16 To me, that's the only issue here. You may
17 have some questions about the economics and what
18 makes sense and what doesn't, but respectfully,
19 that's pretty much irrelevant. The question is
20 have they been complying with the law, and I think
21 the simple answer is no.

22 Mr. Blackwell has talked about discussions
23 recently between the horsemen's groups and
24 Churchill, excuse me, TwinSpires. Jeb Hannum on
25 behalf of the Equine Alliance has been mostly

1 involved in that and not me. If you're interested
2 in hearing that, I'm sure Jeb can go through it.
3 But the point is, we haven't been able to reach an
4 agreement.

5 I don't think it's particularly useful to go
6 through and see who recommended what. The simple
7 point is they haven't complied with the law. They
8 shouldn't be granted a license to continue.

9 CHAIRMAN REYNOLDS: All right. Thank you.
10 Mr. Hannum.

11 MR. HANNUM: Thank you, Mr. Chairman. I think
12 this is not quite as complex as Mr. Blackwell might
13 lead us all to believe, and that as Mr. Petramalo
14 pointed out, the simple fact of the matter is that
15 the law is the law and TwinSpires has decided to
16 break the law.

17 we had had a conversation with Mr. Blackwell.
18 I don't have a date in front of me, but about the
19 time the new legislation was passed, and we
20 explained it was our intent to continue with the
21 rebate, but the law required us to seek the
22 blessing of the Racing Commission, and that was a
23 conversation that we needed to have with them.

24 So we were very surprised when TwinSpires
25 decided not to make any of these payments. we had

1 a number of discussions to try to reach some sort
2 of resolution, and I don't think it's worth going
3 into the percentages of this and percentages of
4 that, but we laid out two different scenarios we
5 felt were very fair.

6 Rebates were consistent upon the model that
7 TwinSpires had been operating under for many years.
8 Those were rejected. We did have a very lengthy
9 conference call with Mr. Blackwell a few weeks ago,
10 which Mr. Hettel participated on, and we asked
11 Mr. Blackwell point blank are you making money in
12 the state of Virginia and his response was yes.

13 So you know, it seems that this is a matter of
14 TwinSpires wanting to make more money, and that's
15 fine, and they're a private company and we don't
16 dispute that, but there's a process, and I think
17 that the law needs to be followed, and there's a
18 process, if you want the law changed, that we all
19 know can be followed.

20 I think it's just important to point out as my
21 last point that the ADWs are allowed to operate to
22 grow the native industry in Virginia, and those
23 moneys that are collected, the breeders, the
24 horsemen for purses and now for the Virginia Equine
25 Alliance are going back to support Virginia

1 horsemen and breeders.

2 This year, as this Commission knows, and we've
3 talked about it many times. We moved Heaven and
4 Earth under very difficult circumstances to provide
5 opportunities for steeplechase horsemen, for
6 Thoroughbred horsemen and for harness horsemen, and
7 we did that and we spent a great deal of money
8 doing that, and that money went to the ADW
9 companies as intended, and it's our intention to
10 have more racing next year and going forward, and
11 we want to use moneys to invest in horses and make
12 improvements and to rebuild Virginia racing for the
13 horsemen and breeders.

14 So it's a very simple proposition that the
15 legislature intended the ADW companies to make
16 contributions to support racing, and that's what we
17 want to do, and TwinSpires is not following the
18 law, and if they don't want to operate in Virginia,
19 then they're free to go, but I would think that
20 later on in the agenda, the Commission would have
21 no choice but to deny their application to operate
22 in 2016.

23 CHAIRMAN REYNOLDS: All right. Thank you. Are
24 there any questions from the commissioners?

25 COMMISSIONER MILLER: Mr. Chairman.

1 CHAIRMAN REYNOLDS: Yes, sir.

2 COMMISSIONER MILLER: Go ahead.

3 COMMISSIONER DAWSON: I just have one, and I
4 know Mr. Petramalo addressed this. That this is a
5 law in Virginia. It was passed by the legislature.

6 MR. PETRAMALO: Yes.

7 COMMISSIONER DAWSON: The Racing Commission has
8 no power or authority to change that, correct?

9 MR. PETRAMALO: Correct.

10 COMMISSIONER DAWSON: Only the Courts could.

11 MR. PETRAMALO: Well, and the General Assembly.

12 COMMISSIONER DAWSON: And the General Assembly.

13 MR. PETRAMALO: Yeah.

14 COMMISSIONER DAWSON: So I mean what's the
15 issue?

16 MR. PETRAMALO: That was my question.

17 COMMISSIONER DAWSON: So that was my question.

18 CHAIRMAN REYNOLDS: Commissioner Miller.

19 COMMISSIONER MILLER: Mr. Chairman, I'd just
20 like to kind of create a record here, perhaps.
21 First of all, will someone, anyone, commission
22 staff or the parties for the record so we'll have
23 it in the record. What is the process for the ADW
24 distribution in Virginia? In other words, ADW
25 company X, operates in Virginia. Frank, I guess

1 you could explain it, or Brad.

2 MR. PETRAMALO: Yes. I can.

3 COMMISSIONER MILLER: How do the moneys get
4 from the ADW company into the state of Virginia?
5 who do they go to, and how is it distributed after
6 it gets into the state of Virginia?

7 MR. PETRAMALO: I can tell you from the
8 horsemen's perspective what happens. Let's take
9 TwinSpires. Every month, we received, the Virginia
10 HBPA receives a -- received an electronic transfer
11 from Churchill Downs, TwinSpires, to our bank
12 account. That amount was as follows -- is
13 calculated as follows.

14 It was five percent of the Thoroughbred handle
15 in the preceding month. The same occurred with
16 respect to the Harness Horse Association. Five
17 percent of the Standardbred handle generated in
18 Virginia in the prior month sent to the harness
19 folks.

20 Now, I can make this representation that when
21 Colonial Downs was operating, same thing happened.
22 Colonial Downs got five percent, so that takes you
23 to ten percent. The industry was getting ten
24 percent, the racetrack operator five, the horsemen
25 five.

1 Now, the remaining percent-and-a-half went to
2 the, quote, state. A half percent went to the
3 Racing Commission and one percent went to the state
4 Breeders Fund. That's basically how it operated.

5 COMMISSIONER MILLER: Okay.

6 MR. PETRAMALO: Oh, let me finish. Now, on a
7 quarterly basis, the HBPA would calculate its share
8 of the two-and-a-half percent rebate. Remember, I
9 said they were paying nine percent and not
10 eleven-and-a-half percent. So our share as the
11 horsemen was 50 percent; namely, a percent and a
12 quarter, I think. Does that make sense? Yeah.
13 Colonial paid half of the rebate and the horsemen
14 paid half of the rebate, and again on the
15 horsemen's side, we divvied up the rebate based on
16 handle. They sent back basically 25 percent of
17 their handle, and we sent back 25 percent of our
18 handle to TwinSpires.

19 COMMISSIONER MILLER: The rebate would go back
20 to the ADW company --

21 MR. PETRAMALO: Yes.

22 COMMISSIONER MILLER: -- and it would be from
23 the Thoroughbred Horsemen's Association and the
24 Harness Horsemen's Association --

25 MR. PETRAMALO: Yeah.

1 COMMISSIONER MILLER: -- and Colonial Downs?

2 MR. PETRAMALO: Correct. Basically, I don't
3 know whether those folks did it with electronic
4 transfers. We did it with checks. Let's say we
5 all did it with checks.

6 COMMISSIONER MILLER: Right.

7 MR. PETRAMALO: TwinSpires would get three
8 checks; one from the racetrack and one from each of
9 the horsemen's groups.

10 COMMISSIONER MILLER: Does anyone in the room,
11 is anyone in the room aware of what rate
12 Virginia's -- I'm calling it a rate --
13 eleven-and-a-half percent that's in the statute?

14 MR. PETRAMALO: Right.

15 COMMISSIONER MILLER: What is that comparable
16 rate in other states in which these ADW companies
17 operate? I know it varies from state to state from
18 zero to something.

19 MR. PETRAMALO: That's an interesting question.
20 TwinSpires operates in 38 states. Only 12 of those
21 states require licensing; one of the 12 being
22 Virginia. The other 24, no licensing.

23 For example, our neighbors, West Virginia,
24 Delaware, Pennsylvania, no license requirement.
25 Maryland, there is a license requirement. I can't

1 tell you specifically what TwinSpires pays, if
2 anything, in source market fees in other
3 jurisdictions. I believe that it is nowhere near
4 eleven-and-a-half percent, and in many
5 jurisdictions, it probably is zero.

6 COMMISSIONER MILLER: Zero.

7 MR. PETRAMALO: Yeah. That's how they operate.
8 Now, let me say something since I'm talking about
9 this big corporation, this big TwinSpires.

10 By the end of the year, if you look at their
11 first three quarters of this year which they
12 reported, they probably will handle close to \$1
13 billion in those jurisdictions that I've named. Of
14 that, the Virginia handle would probably be less
15 than two-and-a-half percent. So we're small
16 potatoes in the TwinSpires empire.

17 COMMISSIONER MILLER: Can I ask Mr. Blackwell?

18 CHAIRMAN REYNOLDS: Yes. Ask all the
19 questions.

20 COMMISSIONER MILLER: Mr. Blackwell.

21 MR. BLACKWELL: Commissioner Miller.

22 COMMISSIONER MILLER: Could you further expand
23 on that question I addressed to Mr. Petramalo?

24 MR. BLACKWELL: Sure. I'm glad you asked that
25 question. I think Mr. Petramalo's information is

1 probably a little stale --

2 COMMISSIONER MILLER: That's okay.

3 MR. BLACKWELL: -- because it sounds like it
4 was something probably that was made in the case in
5 2008.

6 There are certainly more jurisdictions. If I
7 had time, I could count them on my fingers because
8 I dealt with the majority of them. There are
9 certainly more states that regulate and or license
10 ADW activity than there were in the past.

11 There's Arkansas is a state that came on
12 recently. That's a state, and I think the fact is
13 most of these states handle these issues
14 differently. The majority of them may be similar
15 to what Virginia had back in our 2007 law, and that
16 was that there was an agreement that may be
17 required with a local track in terms of negotiating
18 deals that were typically included in these
19 agreements, these granting wagering rights.
20 Certainly, Virginia is by far the worst. I think
21 there's probably gonna be --

22 COMMISSIONER MILLER: To characterize that,
23 Virginia is the highest.

24 MR. BLACKWELL: The highest. Right. The
25 highest. That is in terms of how much it takes out

1 of take-out. And again, that's off the top before
2 any costs are incurred. So there's a number of
3 issues that I want to address based on previous
4 testimony.

5 California was probably known to be one of the
6 worst at four. California's position was they are
7 such a large wagering state, they would demand a
8 little more from ADWs. One of the -- if you get a
9 smaller part of the very large market, you should
10 be able to still do pretty well.

11 Now California actually works from the
12 perspective of making sure that the ADW gets a
13 certain percentage back, that they are ensured
14 profitability. So in California, I think the law
15 says that the ADW can get as much as 6.25 percent
16 back to them guaranteed for every wager, and that
17 is actually handed over to negotiation between the
18 track in California.

19 So those are contractual relationships. So I'm
20 certainly not at liberty to discuss every rate in
21 every jurisdiction because they are persuant to
22 negotiation in a lot of states. There are states
23 that actually dictate what those fees should be.

24 COMMISSIONER MILLER: Those are the ones I'd
25 like to opine on.

1 MR. BLACKWELL: Sure.

2 COMMISSIONER MILLER: Given a few examples of
3 other states, what is their rate?

4 MR. BLACKWELL: What is their rate? California
5 is a state that says the ADW can get up to 6.255,
6 but then the actual rate is determined by an
7 agreement with the track. There's, I'm trying to
8 think of another state that really dictates. I'm
9 thinking New York is five, but don't necessarily
10 quote me on that, but I think it's around five is
11 another state. I'm trying to think. I think there
12 are so few states that actually dictate what those
13 rates are.

14 Kentucky is a state that basically says there's
15 a tax that goes to the state. Small tax that goes
16 to the state, and then after that there's no
17 requirement. It's actually covered in agreements
18 between the racetracks, similar to most other
19 states and how Virginia was when we first started
20 doing business first in back in 2007.

21 COMMISSIONER MILLER: Mr. Chairman, could I
22 follow up with another question?

23 CHAIRMAN REYNOLDS: You have my permission to
24 ask all the questions you want.

25 COMMISSIONER MILLER: Mr. Blackwell, as

1 Mr. Petramalo has pointed out, there has been a
2 system in Virginia that the eleven-and-a-half
3 percent rate that was set by the Virginia
4 legislature has been minimized -- I don't know how
5 to characterize it -- tempered by the fact that
6 there has been a rebate program.

7 MR. BLACKWELL: Correct.

8 COMMISSIONER MILLER: Is it as Mr. Petramalo
9 just testified?

10 MR. BLACKWELL: I don't know how I would
11 characterize it. When this first surfaced, and
12 Commissioner Miller, thankfully, you were in some
13 of these commission meetings. When this first
14 surfaced and eleven-and-a-half was passed by
15 Virginia, we went into these meetings, the ADWs
16 were complaining, there were out-of-state
17 racetracks that were representing they were
18 complaining about the economics and how this
19 doesn't work for the rest of the industry.

20 What was discussed at that point was, and I
21 think this was initially brought up by Ian Stewart,
22 who was then president of Colonial Downs. He was
23 like, wait a minute. Eleven-and-a-half doesn't
24 have to be eleven-and-a-half. We can actually
25 provide rebates back to these operators to make

1 sure that this works, and we're actually using this
2 rate as leverage in our negotiations.

3 It was somewhat ironic to us, because at the
4 time, Colonial Downs was part of the Mid-Atlantic
5 co-op, which is a very large buying co-op buying
6 signals, so they had a lot of protection being a
7 part of that group, but they saw that as leverage
8 going in to some of these discussions that says,
9 hey, we can stick you with eleven-and-a-half, which
10 is kind of somewhat the approach we have been
11 dealing with this year, and if not, we're gonna use
12 that as leverage to negotiate a deal.

13 So I think each of us probably have our own
14 assessments of how some of these negotiations went,
15 and the truth is always, you know, kind of
16 somewhere in between.

17 One of the discussions that Jeb had mentioned
18 before, we reached out, talked with the VEA and
19 talked with the horsemen and we were discussing
20 these rebates as had been the practice before to
21 make it, you know, bearable and to cover costs of
22 doing business.

23 What my perception was is that these
24 organizations were hiding behind another change in
25 the law. A change in the law that occurred with

1 that last ADW law that this money has to be spent
2 by these organizations for promoting, sustaining
3 virginia racing and growing virginia racing. It
4 was like, hey, we don't know if we can make these
5 rebates anymore. I'm like, what do you mean?
6 They're like, well, the law says this.

7 The reason the law changed was because these
8 groups pushed that language, and I think it was in
9 the best interest of them to get away from the
10 rebate concept of, you know, look. We were giving
11 some rebates before and we're gonna try to get out
12 of this.

13 COMMISSIONER MILLER: You're speaking of the
14 law that provided that any expenditure of these
15 funds by the Virginia Equine Association or the
16 horsemen had to be approved, subject to the
17 approval of the Commission.

18 MR. BLACKWELL: Correct. Right. Yes, sir.
19 And the way that meeting ended was that they said
20 that they would go and check with the Secretary of
21 Agriculture and check with the Commission to see if
22 that was even an option to rebate, and I said I'm
23 sure the Commission won't have a problem with it.
24 They understand our plight.

25 we had talked with probably the Secretary of

1 Agriculture at some point. I maintained
2 discussions with them throughout the process, and
3 so we were waiting on that return call to say yes,
4 we can do this, now let's start, you know,
5 discussing rates.

6 We never got the return call and this is where
7 there's probably some disagreement about how long
8 that took. My impression was that took months and
9 we never heard back. That's when we started
10 withholding payments because we grew tired of no
11 progress on any of these discussions.

12 So when this came up and we stopped making
13 payments, I think their impression was this is a
14 matter of days or weeks in between when this
15 conversation took place and when we received any
16 feedback. We never received feedback on that
17 promise that said it was okay to make those
18 payments.

19 COMMISSIONER MILLER: Would it be safe to say
20 -- I don't want to put you on the -- well, would it
21 be safe to say that had TwinSpires received a
22 communication back from the rebaters, we'll call
23 them, that's the VEA and the horsemen, had that
24 communication indicated we feel that the Commission
25 and the Secretary of Agriculture of Virginia will

1 be susceptible to approving this rebate program as
2 it has gone on in the past, is it safe to say then
3 you would have continued on, you would have made
4 your adjustments and we wouldn't be here today?

5 MR. BLACKWELL: I don't know if that's safe to
6 say, because I don't know what the rates were and
7 there's been a lot of gamesmanship in terms of how
8 the rates work.

9 Before when we were looking at this, and I'd
10 prefer not to necessarily talk numbers on the
11 public record because some of these have been
12 private negotiations. Some parties feel greater
13 liberty than I do to discuss those.

14 But you know, the fact of the matter is before,
15 under the previous ADW law, I think what was
16 suggested before was ten percent was going to
17 Colonial Downs and horsemen. So the rebate that we
18 were looking at at that point was coming from a ten
19 percent number.

20 Then when we came back this round, it was like,
21 well, you know, the horsemen, you know, are getting
22 five, the VEA who kind of took their place is only
23 getting four. Then the four, it turned from five
24 to four, and then we started having discussions
25 about rebates, and it's like, well, we really only

1 make 3.35, because of the four we get, some other
2 people have their hands in our pockets and we feel
3 like everyone has their hands in our pockets as
4 we're trying to make this work.

5 So the numbers have changed quite a bit, and I
6 think we were looking at it from the perspective of
7 the facts and circumstances have changed in
8 Virginia. I think Virginia is seeking a model now
9 that is maybe a more cost efficient model where
10 it's not as expensive to run racing.

11 So we're questioning, one, should we be
12 contributing to racing that was nonexistent for a
13 long period of time, then should we be contributing
14 the same amount to a much less expensive racing
15 product.

16 Again, there are so many complications here and
17 we are looking to try to work together, and I think
18 had we been able to do that back in 2007 or '08
19 instead of passing a law that only paid the
20 intrastate interest, we probably wouldn't be in
21 this predicament.

22 I think the problem is that problem surfaced in
23 2008 and it really hasn't been quite corrected. We
24 try to do our best to work through these issues.
25 Certainly, we take exception to saying we are

1 breaking the law. We feel like we have been
2 working with the Commission. We have been in good
3 faith negotiations with these groups, consistent
4 with what we did in the past, and that is we try to
5 work toward a solution.

6 I've also certainly seen other commissions in
7 different parts of the country take a fairly strong
8 stance on these types of issues and say, hey, we're
9 going to continue to when certain groups can't
10 agree on something and even if the law requires
11 something, I've seen a Commission say, you know
12 what guys, you've got to work it out and we're
13 going to make sure you work it out. We're going to
14 basically extend this ADW license on a
15 month-to-month basis until you do what's right and
16 figure some solution to some of these issues.

17 We've seen different approaches when we're at
18 an impasse as we are here, because these
19 negotiations can be difficult, and I think it's one
20 of those things. We have certainly tried and at
21 times we have questioned whether there's a real
22 interest and effort with the other parties to reach
23 a deal.

24 COMMISSIONER MILLER: Have you since 2009 or
25 '10 contemplated as a company going to the Virginia

1 legislature and getting this eleven-and-a-half
2 percent reduced? Now true, it may be that because
3 of the rebate program that was going on, you may
4 not have felt persuaded to do that under the
5 circumstances, but have you contemplated it at all
6 over the past five years or six years?

7 MR. BLACKWELL: That's a great question. I
8 don't know that we contemplated it. Certainly when
9 this most recent law was passed, we actually spent
10 time speaking to legislators on the issue, because
11 certainly it was a reminder of the problem, and
12 certainly what we saw was a change in Virginia
13 racing that certainly led to additional
14 frustration, and we did speak to legislators, and
15 maybe that's a part of the fix.

16 To that point, I think another issue that we've
17 had in some of our negotiations is that these
18 groups have insisted that any rebate also required
19 us to give up our rights to do exactly what you're
20 suggesting, and that is go to the legislature and
21 find a solution.

22 we think that, again, these parties should be
23 working together to find a solution that works for
24 everyone, and for them to say that they're trying
25 to take that right away is certainly something that

1 we felt if we are being asked to give up something
2 that there would be some compensation for that or
3 they work out a deal with us that discourages us
4 from needing to go talk about a change. That's
5 been a bone of contention, is their insistence upon
6 us of giving those rights up.

7 COMMISSIONER MILLER: Thank you.

8 CHAIRMAN REYNOLDS: Mr. Petramalo, is there an
9 arrangement with Xpressbet and TVG and what the
10 situation with them is? They're an ADW company --

11 MR. PETRAMALO: Yes.

12 CHAIRMAN REYNOLDS: -- much like, exactly like
13 TwinSpires, I guess, as far as the laws are
14 concerned.

15 MR. PETRAMALO: We are currently operating
16 under a three-year contract. Let me call it a
17 rebate contract with Xpressbet that expires at the
18 end of this month, and under it we have been
19 rebating under a formula. There's no flat
20 percentage, but there's a formula that gives the
21 ADW a certain return. I think it's 7.125 percent
22 or something like that.

23 Anyway, we're currently operating under that
24 contract. We are in discussions to renew the
25 contract. Whether or not that's going to result in

1 the successor contract, I don't know, but we are in
2 discussions with them.

3 with regard to TVG, we have certainly not since
4 2008 or '09 had any rebate agreement with them.
5 TVG has never expressed any interest in a rebate
6 agreement. I'm not sure why. We certainly -- when
7 I say we, the horsemen and the track, were
8 interested in talking to them because we thought it
9 would be helpful to the Virginia program if we were
10 to negotiate a rebate deal with them, and as part
11 of the deal, get us some type of feature
12 presentation on their TV show. But they never bid
13 on it, so we never had any agreement with TVG. So
14 since 2009 or 2010, they have been paying the
15 eleven-and-a-half percent faithfully, or at least
16 with regard to the horsemen when we get our
17 electronic transfer every month from TVG.

18 Now with Xpressbet and TwinSpires, it was a
19 slightly different situation, because Xpressbet is
20 the -- what used to be Magnon [ph] is now the
21 Stronach. They're a horsemen's organization, a
22 racing organization. They control content.
23 Golfstream. The two Gulfstreams now, Santa Anita,
24 Maryland Jockey Club, Portland Meadows, Golden Gate
25 up in northern California. So we were more than

1 willing to rebate to them because they were giving
2 EZHorseplay a break on the host fees, and we the
3 horsemen were partners in EZHorseplay.

4 with Churchill, it was slightly different, but
5 there was some consideration what we were getting
6 from Churchill for the rebate.

7 Now, I'm not sure whether I correctly heard
8 Mr. Blackwell say that he didn't understand the
9 rebate program or how it was working.

10 For the first year, 2010, we had a written
11 contract which flat out said that two-and-a-half
12 percent gets rebated and it's split 50/50 between
13 the horsemen and the track.

14 In subsequent years for reasons I don't quite
15 remember, Churchill did not want to enter into a
16 written contract; we just continued on a handshake
17 basis and we continued rebating them right up until
18 they stopped paying us. This gets me to another
19 point I wanted to respond to.

20 Mr. Blackwell kind of suggested that there was
21 something nefarious that went on with regard to the
22 provision in the July 1st law, which says you need
23 the VRC approval, and he was suggesting that
24 somehow we were trying to hide behind that to keep
25 from paying.

1 First of all, I was there, he wasn't. That
2 particular phrase came from one Mr. Jim Weinberg on
3 behalf of Colonial Downs. That's how that got into
4 the law. We had nothing to do with it.

5 But more importantly, as long as TwinSpires
6 continued paying us, and even though there's that
7 restriction in the law, we continued paying the
8 25 percent from other funds that we had. We were
9 unsure about whether we could do it under the law,
10 so we continued paying the 25 percent from other
11 funds just to show our good faith that we would
12 keep going forward with the program.

13 One final minor point, since I'm a lawyer and I
14 never let anything go un-responded. It's my DNA.
15 The numbers that I quoted, 38 states, 12 with
16 licensing. Mr. Blackwell suggests that's 2008
17 data. All I can say is I got it maybe two days ago
18 from the TwinSpires website.

19 MR. BLACKWELL: I would like to respond to any
20 suggestion that I'm being untruthful here. I don't
21 know --

22 MR. PETRAMALO: I'm suggesting you're being
23 inaccurate. I'm not questioning your motivation.

24 MR. BLACKWELL: So, Mr. Petramalo, are you
25 referring to how many states TwinSpires operates in

1 or are you referring to how many states license and
2 regulate ADWs?

3 MR. PETRAMALO: Both.

4 MR. BLACKWELL: Okay. It's my understanding
5 there are certainly more than 12. I know of three
6 or four that have come on line in the last year.
7 So if you're citing information from a certain
8 source, I don't know that that's accurate, but I
9 could probably count on my hands how many are
10 regulating the activity. I'll start jotting down
11 states that I know for sure --

12 CHAIRMAN REYNOLDS: We don't need to know that.

13 MR. PETRAMALO: Let me amend my response.

14 CHAIRMAN REYNOLDS: All right.

15 MR. PETRAMALO: The 38 states came from the
16 website. The 12 states where they are licensed
17 came from the 2015 10Q that they filed with the
18 Securities and Exchange Commission.

19 CHAIRMAN REYNOLDS: Okay. Well, thank you.
20 Mr. Blackwell, do you all talk with your
21 competitors, TVG and Xpressbet, as far as getting
22 together and talking about the issue with the
23 Commonwealth of Virginia of eleven-and-a-half
24 percent and maybe getting together and going down
25 and lobbying for something better?

1 MR. BLACKWELL: We have not worked together to
2 lobby on the issue. I think when the first law was
3 passed in 2007, 2008 -- Frank, when was that?

4 MR. PETRAMALO: Well, the first, very first law
5 was --

6 MR. BLACKWELL: I guess the second law that
7 introduced the eleven-and-a-half percent. Was that
8 2008?

9 MR. PETRAMALO: I think it was the 2009
10 session, because I believe it was effective July 1
11 of 2009, I think.

12 MR. BLACKWELL: So to answer your question, I
13 thought it was 2008 when the eleven-and-a-half was
14 introduced.

15 COMMISSIONER MILLER: I believe it was 2008.

16 MR. BLACKWELL: When we learned about that, the
17 ship had sailed, and this is one of the many
18 disadvantages of being an out-of-state operator in
19 a state, is that we're not intimately involved with
20 the legislative process.

21 So we learned of that bill when it was too
22 late. The ship had kind of sailed. I think each
23 of the ADW companies joined in a letter to the
24 governor to express concern with that law.

25 We have had conversations at various times

1 about the problems with Virginia law, so certainly,
2 I would expect Xpressbet and TVG if they have not
3 reached out to the Commission recently, I would
4 think they would have some concerns and there may
5 be representatives from those two groups that are
6 here today that can maybe weigh in on that, because
7 I'm sure they dealt with the same issues that we
8 dealt with.

9 MR. PETRAMALO: Let me, if I might with your
10 permission add some context here, some history.
11 The ADW law I think was passed in 2003. 2005 was
12 -- our first ADW company was EZHorseplay, and then
13 subsequently the national companies came on line,
14 came into Virginia and got licensed.

15 But the law up until whether it was 2008 or
16 2009, said that in order to be licensed as a ADW
17 company, as part of the licensing process, you have
18 to have an agreement with the racetrack and the
19 horsemen. So for a number of years, we negotiated
20 these agreements.

21 And to make a long story short, we started --
22 we meaning the horsemen and Colonial Downs --
23 started running into problems negotiating contracts
24 because the other side, for whatever reason, had
25 more leverage than we did, and we came to impasse a

1 number of times and I think we even went to
2 mediation.

3 That is what spurred us to go to the
4 legislature and said, look, you've got to
5 straighten this out instead of going through this
6 negotiating, mediating, et cetera, and set some
7 specific numbers. And that's how it came about.

8 Now I'm surprised that nobody seemed to know
9 about this other than Colonial Downs and the
10 horsemen, but that's how it happened.

11 MR. BLACKWELL: And since we're revisiting
12 history, this was something that played out in
13 2008, but I think part of where these numbers came
14 from was that I think when ADWs started in
15 Virginia, there was an entity that is still
16 licensing now, TVG.

17 TVG was one of the pioneers in ADW, and they
18 had agreements with various racetracks throughout
19 the country, including our own, where they had the
20 exclusive rights to take ADW wagers on that
21 content, and at the time, it was for a host fee
22 that I think was about three-and-a-half percent.

23 So at one point, they were paying Virginia a
24 ten percent source market fee and paying racetracks
25 a three-and-a-half percent source market fee, and

1 as we mentioned with the blended take-out rate,
2 that was leaving them roughly six-and-a-half
3 percent that they were making in the state.

4 They were also licensing those signals and
5 making -- charging more than the three-and-a-half
6 to some other ADW companies, so that was kind of
7 where this pricing started.

8 There was a point when Youbet, another ADW
9 operator, was unable to reach an agreement with
10 Colonial Downs and the Virginia horsemen to gain
11 access through a license in the state of Virginia,
12 and the reason was that the horsemen and Colonial
13 Downs was demanding this ten percent.

14 what the record reflected that Mr. Petramalo
15 mentioned that Youbet was offering was three
16 percent. He referred to that as a pittance. That
17 that's what that amounted to back then, and it's
18 ironic that now that's the amount we are expected
19 to take, which is less than the three percent the
20 way the law is set up.

21 So the problem is that the industry has
22 evolved. There was a point where host fees were
23 nominal and there was a point where host fees
24 started going up in Virginia and the Virginia HBPA
25 and Colonial Downs started taking exception to

1 that. They started seeing those host fees go up
2 and they said, wait a minute. We're not going to
3 allow that. That's what really was one of the
4 other things that prompted the law according to
5 testimony back in 2008.

6 CHAIRMAN REYNOLDS: Do any of you all maybe
7 anticipate going to the legislature this year to
8 try to introduce some sort of legislation to fix
9 this issue?

10 MR. PETRAMALO: We don't think it needs to be
11 fixed. If there's any movement in the legislature
12 to change it, we will oppose it.

13 CHAIRMAN REYNOLDS: Mr. Blackwell.

14 MR. BLACKWELL: I think it needs to be fixed,
15 and I think part of the problem is that again, it
16 requires cooperation among the parties. When I
17 quoted Commissioner Miller back in 2008, I think
18 that was at least part of his point, was that this
19 law was passed in a vacuum. It did not include all
20 of the necessary industry participants to be able
21 to explain how some of these things work.

22 when you start talking about eleven-and-a-half
23 percent, it may not sound like much when it comes
24 from 100. It may not sound like much in terms of
25 tax on top of the additional cost of a product, but

1 it just does not work that way here.

2 There is a limited amount that can be
3 distributed to the industry. Instead of taking
4 care of local interests, we feel like it needs to
5 take care of the interests that are actually
6 generating the revenue, putting on the product and
7 delivering that product to the state of Virginia.

8 So again, I think that it requires some
9 cooperation, and certainly we have been willing to
10 cooperate. We have tried to have these discussions
11 and we're continuing to try to have these
12 discussions, and at this point, again in the
13 interest of feeling like we've exhausted our --
14 this process and to feel like we have made a good
15 faith effort, we are certainly willing to talk with
16 these guys today, and we certainly welcome some
17 participation from the Commission in doing so.

18 CHAIRMAN REYNOLDS: If I recall, the gentleman
19 was not sworn in.

20 MR. MURPHY: I wasn't sworn in.

21 MR. PITCHFORD: Let's do it.

22 MR. MURPHY: I'm George Murphy, and I represent
23 Xpressbet. We more or less concur with what Brad
24 is saying.

25 CHAIRMAN REYNOLDS: We're having a hearing, so

1 I'm going to have to swear you in.

2 NOTE: The witness is sworn.

3 MR. MURPHY: Again, I represent Xpressbet, and
4 we agree with Mr. Blackwell these are (inaudible).

5 THE COURT REPORTER: Chairman Reynolds, I
6 cannot hear him.

7 MR. HETTEL: Step up so the court reporter can
8 hear you.

9 CHAIRMAN REYNOLDS: Step up so we can get you
10 on the public record. Can you start over, please?

11 MR. MURPHY: George Murphy with Xpressbet. We
12 agree with Mr. Blackwell the fees are exorbitant,
13 but on the other hand, we know the law is what it
14 is, and I happen to be a lobbyist full-time, so I
15 know what the laws are, but they can be fixed. I
16 mean we can go over it and we have discussed it,
17 although I haven't discussed it with Brad. I have
18 certainly discussed it with my client, and the way
19 to fix it is you get a higher rebate, Frank, or you
20 go back over to the legislature and change it.

21 But that's the way you solve it. But it is a
22 problem. I mean how you resolve it is, it can be
23 resolved. I just think we have to work together
24 for the game and get away from the
25 eleven-and-a-half percent because that's too much

1 money.

2 COMMISSIONER VAN CLIEF: Can I ask a question?

3 CHAIRMAN REYNOLDS: Yes, Mr. Vice Chairman.

4 VICE CHAIRMAN VAN CLIEF: Any of the parties
5 might want to answer.

6 CHAIRMAN REYNOLDS: Yes, sir.

7 COMMISSIONER VAN CLIEF: You've all said that
8 out of the eleven-and-a-half percent there's been a
9 two-and-a-half percent rebate and that has worked
10 with nine percent net coming back to the industry.

11 MR. MURPHY: I don't think we get
12 two-and-a-half percent.

13 VICE CHAIRMAN VAN CLIEF: I'll ask Frank this
14 question.

15 MR. PETRAMALO: As I said before, the Xpressbet
16 agreement is different. It's a formula. It's not
17 a flat two-and-a-half percent. The two-and-a-half
18 percent flat fee was with TwinSpires.

19 VICE CHAIRMAN VAN CLIEF: I'll stay specific to
20 that then. Has that ever been on the table again,
21 and if so, why was it not satisfactory?

22 MR. PETRAMALO: It certainly was on the table
23 again, and you'll have to ask Mr. Blackwell why it
24 is unsatisfactory.

25 COMMISSIONER VAN CLIEF: I'll ask Mr.

1 Blackwell. You've been engaged in a program that
2 involved a fee for services or whatever you want to
3 call it --

4 MR. BLACKWELL: Sure.

5 VICE CHAIRMAN VAN CLIEF: -- of two-and-a-half
6 percent for a number of years now. What's the
7 change this year? Why is that not satisfactory?

8 MR. BLACKWELL: A couple of factors. One was
9 that that rebate was tied to us waiving our rights
10 to pursue a legislative change, which certainly
11 seems to be resonating here today that that's maybe
12 what needs to happen. So that was an issue.

13 The second issue was that, again, we've got to
14 get these numbers where they were a certain
15 percentage of ten at one point. Then they were a
16 certain percentage of another number. So if it's
17 the same as before, that was an issue that we are
18 being asked to waive these rights.

19 The second thing is just things have changed
20 since then. I think since that point when those
21 fees were originally contemplated, host fees have
22 gone up some more and certainly the cost associated
23 with racing in Virginia completely disappeared for
24 a period of time where there was no racing, so then
25 you're asking the question of what are we

1 contributing to. We're contributing to an industry
2 that does not exist. Where is this money being
3 spent? How is it being spent?

4 The second question we're going to is, well,
5 now it seems like racing is less expensive. So if
6 you're able to cut your costs and our costs are
7 growing, there seems to be some change that would
8 reflect those two situations.

9 MR. PETRAMALO: Let me put some economics on
10 the table. Brad has referred to a number of
11 interesting things.

12 Before July 1, the industry -- when I said the
13 industry, I'm talking the racetrack operator and
14 the horsemen getting ten percent. After July 1st,
15 the industry took a haircut from the General
16 Assembly. It went from ten to 8.35 percent.

17 What used to go to the industry had been
18 reallocated to the Racing Commission, New Kent
19 County, the vet school at Virginia Tech, et cetera.

20 So we took a haircut, but what the Equine
21 Alliance offered to do, and the horsemen, was to
22 nonetheless maintain the status quo. In other
23 words, we would continue, quote, rebating the 25
24 percent of the two-and-a-half percent, but it would
25 cost us more because it is now based on 8.35, as

1 opposed to the ten percent. So that's what we had
2 proposed to keep them going along as they had.

3 Now with regard to the other point, Jeb and
4 Debbie can certainly speak to this better than I.
5 But to suggest that there's no racing, we don't
6 know what's going on, where is the money being
7 spent, well, you commissioners know exactly where
8 the money is going. You have the budgets. You
9 approve the budgets, you know what racing is going
10 on and you know what our plans are.

11 CHAIRMAN REYNOLDS: Any other comments from the
12 commissioners? Okay. Are we taking any action on
13 this here or is that going to come up when we
14 consider renewal?

15 MR. HETTEL: It's two-prong. You certainly
16 can. I think all the issues are on the table. We
17 can go ahead and take disciplinary action against
18 -- from hearing this discussion, a lack of respect
19 for the law, a lack of adherence to the law in my
20 letter to Churchill Downs, TwinSpires, two months
21 ago, I pointed that very notion out that this will
22 all -- we're required to enforce our own law.
23 Having said that, I think there is a necessity for
24 some reprimand and some disciplinary action.

25 CHAIRMAN REYNOLDS: Okay.

1 MR. BLACKWELL: Mr. Chairman, if I may, the
2 other thing I certainly wanted to remind you of is
3 that there is a period of time in question where we
4 felt like under duress of our license, we made
5 payments to the Virginia HBPA when they were not a
6 recognized horsemen's group, so we feel like there
7 were payments that were made unjust towards the
8 horsemen.

9 We understand that an in-state ADW provider did
10 not make those payments and certainly questioned
11 whether they were required under the law as well,
12 so we feel like we have gone out of pocket and paid
13 more than we should in certain circumstances as
14 well, and we ask that be taken into consideration
15 and that the Commission weigh in on that issue as
16 well.

17 COMMISSIONER MILLER: Mr. Chairman.

18 CHAIRMAN REYNOLDS: Yes, sir.

19 COMMISSIONER MILLER: Is it your position then
20 that prior to the legislature putting it in the
21 account, that this Commission's recognition of the
22 H --

23 MR. PETRAMALO: BPA.

24 COMMISSIONER MILLER: -- BPA --

25 MR. PETRAMALO: Horsemen's Benevolent

1 Protective --

2 COMMISSIONER MILLER: Okay. That our
3 recognition of them was not -- as a recognized
4 horsemen's group for the past --

5 MR. PETRAMALO: Seventeen years.

6 COMMISSIONER MILLER: -- 17 years is not valid
7 because it wasn't in the statute?

8 MR. BLACKWELL: No. It wasn't because it
9 wasn't in the statute. We questioned how they were
10 recognized, and from what our understanding is, is
11 that part of their recognition was having an
12 agreement with Colonial Downs, the racetrack, and
13 that's now how the recognition process worked.

14 That's something that again we questioned
15 numerous times during the licensing process last
16 year, and it's our understanding that Colonial
17 Downs, and given the fact that they were an
18 in-state entity that was much more familiar with
19 the processes, that I expect that the interstate
20 Horse Racing Act may come into play with this issue
21 as well.

22 But it was our impression there was a question
23 of whether they were recognized at the time. You
24 know, we made those payments again in order to
25 maintain our license. We disagreed with the

1 approach and we questioned it on numerous
2 occasions, and I'm happy to submit those letters
3 where we questioned it.

4 Again, it's our understanding that EZHorseplay,
5 the in-state ADW company, did not make those
6 payments based on the same concern.

7 So that's the situation where we kind of tried
8 to do what was right at the time in order to
9 maintain our license, and it eventually led us down
10 the road of making payments that were not required
11 and were not valid.

12 So now we're in a situation where there are
13 certain payments that we have not made, that we
14 certainly want to take that into consideration that
15 we feel like we made payments that we question
16 whether those were valid or not, and that may be
17 something that certainly we want the Commission to
18 take a look at and take into consideration when
19 it's looking at payments we didn't make.

20 MR. PETRAMALO: A couple points in response,
21 please. One, let me remind the Commission that the
22 Commission made a determination that the
23 EZHorseplay payments were due the Virginia HBPA,
24 some 437,000. Now it is true that in October when
25 Colonial handed in their license, they were gone

1 and we had no contact with Colonial.

2 we obviously did have an outstanding contract
3 with the Gold Cup which recognized us as the
4 majority horsemen's group. More importantly, we
5 have been recognized by this Commission in March of
6 1994 as the majority horsemen's group based on the
7 showing of authorization cards and we've continued
8 through that period of time. Nothing has changed.

9 So this argument that I'm hearing today for the
10 first time is kind of interesting, but I don't
11 think it has merit.

12 CHAIRMAN REYNOLDS: Yes, sir.

13 MR. MURPHY: George Murphy again with
14 Xpressbet. I want the record to reflect that we
15 have continually paid these fees, although we
16 believe as Mr. Blackwell does they are exorbitant,
17 but we continued to pay them, and I think, Frank,
18 we are up to date, as far as I know.

19 MR. PETRAMALO: Yes. We have a very harmonious
20 relationship with Xpressbet. They have paid us and
21 we have rebated to them.

22 COMMISSIONER MILLER: Until this moment.

23 MR. PETRAMALO: Until December 31st.

24 MR. HETTEL: We will discuss that on January 6.
25 Let's keep this on the rails here, Mr. Chairman.

1 CHAIRMAN REYNOLDS: I'm trying to.

2 MR. HETTEL: I know you are.

3 CHAIRMAN REYNOLDS: I won't be at the January 6
4 meeting.

5 MR. HETTEL: Yes. You will.

6 CHAIRMAN REYNOLDS: Anyway, is that it for the
7 Commissioners' comments? Mr. Hettel, you said
8 that --

9 MR. BLACKWELL: Mr. Chairman, if I may, the
10 last thing. I think I pointed this out before, but
11 certainly, based on the suggestion by Executive
12 Director Hettel, I just want to point out that we
13 have been a licensee in good standing since 2007.
14 So we have again made significant contributions to
15 this state, to the Commission, to the Virginia
16 racing interest and have serviced and provided
17 value to Virginia residents, so certainly we feel
18 like we've been actively involved in all
19 communications with the Commission, primarily
20 through Mr. Hettel in terms of here is our
21 position, here is our concerns. Here's the efforts
22 that we are making.

23 At one point, I think it was fairly painful to
24 even get through negotiations because there was so
25 much paper and memos being exchanged and it turned

1 into a very formal process, all in the interest of
2 making sure that the Commission was up to date in
3 terms of what was going on, and all of that was in
4 the efforts of complying with the law.

5 I think suggestions have been made just go file
6 a lawsuit or just go change the law, and I think
7 the approach that we have taken, again, was in the
8 interest of trying to cooperate with these parties
9 of offering some way.

10 We certainly have made, you know, payments to
11 the horsemen during that period of time, but it was
12 done, and in the effort of seeing that
13 contributions are continued to be made going
14 forward, as opposed to just cutting everything off
15 and seeking a solution that would certainly be only
16 in our best interest. So again, I just want to
17 make sure that all of this is on the table with any
18 type of recommendation or vote.

19 COMMISSIONER DAWSON: Mr. Chairman, I just have
20 one question. I understand that we do have to
21 enforce the law; we can't change the law ourselves,
22 but the disagreement between TwinSpires and the
23 Virginia horsemen is basically the percentage of
24 the rebate.

25 MR. PETRAMALO: Correct.

1 COMMISSIONER DAWSON: So that's where the
2 disagreement is and we cannot effect that, either
3 other than --

4 MR. PETRAMALO: Correct.

5 COMMISSIONER DAWSON: -- making a
6 recommendation or something. So I don't know what
7 our options are.

8 MR. BLACKWELL: And again, I think that our
9 request today was to have a break-out session with
10 these groups with some participation from the
11 Commission. What we have observed is that the only
12 really movement that we have seen was when we were
13 here last month prepared to go into a hearing
14 similar to this, and Mr. Hettel took Frank and I to
15 the side and said, hey, let's work through this.

16 At that point, I think we thought a deal could
17 be had. And the fact of the matter is we're
18 probably not that far apart; however, there have
19 been issues that have been introduced such as
20 waiving our rights to seek a legislative change and
21 things of that nature that complicated things.

22 COMMISSIONER MILLER: Mr. Chairman.

23 CHAIRMAN REYNOLDS: Yes, sir.

24 COMMISSIONER MILLER: On that point, no one --
25 I'll say this, everyone in this room -- No one

1 making any kind of agreement should ever, no one
2 making any kind of an agreement should have held
3 over their head that they can't go to the
4 legislature of Virginia and seek a redress of any
5 grievance of whatever nature. I'm disappointed if
6 someone expressed that to any of our licensees,
7 that we'll deal with you, but you stay away from
8 the legislature.

9 MR. PETRAMALO: Let me respond to that. With
10 all due respect, Commissioner, you have practiced
11 law and lawyers all the time enter into settlements
12 to avoid taking their dispute to court.

13 COMMISSIONER MILLER: Well, I'm not talking
14 about court.

15 MR. PETRAMALO: Please let me finish. We have
16 been willing to negotiate agreements with Xpressbet
17 and TwinSpires, knowing that they don't like the
18 law. We've been able to reach agreements with them
19 and we give in to their concern by saying, okay,
20 we'll rebate this to you. That settled the matter.
21 Nobody was going anyplace because they had a deal.
22 Now why in the world would I enter into a deal now,
23 only to have TwinSpires next month go into the
24 legislature to try and undo it? It makes no sense.

25 COMMISSIONER MILLER: Well, if you do it and

1 they go, you go to the legislature and fight it.

2 MR. PETRAMALO: We certainly will be there to
3 fight it, but the whole point of an agreement is to
4 avoid fighting and to come up with a settlement.

5 CHAIRMAN REYNOLDS: Mr. Hannum.

6 MR. HANNUM: One final point. We were talking
7 about the horsemen, and I just wanted to, just for
8 the record, remind the Commission that the Virginia
9 Equine Alliance is due through November \$363,000;
10 and New Kent County, 37,000; Virginia Tech, 16,000;
11 Virginia Horse Center, 5,000; Virginia Horse
12 Industry Board, 5,000; Virginia Thoroughbred
13 Association, 5,000; and the Breeders Fund, 42,000.
14 I obviously rounded those numbers off.

15 So I think we have a model here where we have a
16 company that's willing to follow the law and work
17 with the parties and Xpressbet, and then we have a
18 model where we have a company that has blatantly
19 broken the law because it is taking the position
20 that they don't need to follow it.

21 I just think that's important that we have two
22 different examples of companies who want to remain
23 in Virginia and we want to work with, but I think
24 those numbers speak to the effect, ultimately, that
25 we will be able to have on having racing next year

1 unless those moneys are paid back to us.

2 COMMISSIONER MILLER: Mr. Chairman.

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER MILLER: Could I ask Mr.
5 Petramalo? Are the figures that he just cited in
6 addition to the 189,000?

7 MR. PETRAMALO: Yes. Yes. Yes.

8 MR. HANNUM: The total amount is over 600,000
9 -- the exact number --

10 COMMISSIONER MILLER: I'm sorry. I have it
11 right here.

12 MR. HETTEL: Six eighty-eight.

13 MR. PETRAMALO: Commissioner Miller, the four
14 percent goes to the VEA and then they have the --

15 COMMISSIONER MILLER: Yeah.

16 MR. HETTEL: It's in the break-out in front of
17 you.

18 COMMISSIONER MILLER: Yeah. I've got it right
19 here in front of me. I should have looked down.
20 \$688,120.28

21 MR. HETTEL: Those are all the beneficiaries.

22 MR. BLACKWELL: And certainly we can get an
23 accounting of the payments we made to the Virginia
24 HBPA that you think are in question as well, and I
25 would think that number exceeds that amount.

1 COMMISSIONER MILLER: Just one other question.

2 MR. BLACKWELL: Sure.

3 COMMISSIONER MILLER: This 688,120.28, the
4 total amount that is owed, that is without
5 considering any kind of rebate?

6 MR. PETRAMALO: Correct.

7 COMMISSIONER MILLER: Okay.

8 MR. BLACKWELL: Commissioner Miller, given your
9 position on the pursuit of, or at least the right
10 if one were to choose to pursue a legislative
11 change, that coming out of an offer certainly can
12 make a difference, and that's one of the issues
13 that we were hoping the Commission would be able to
14 weigh in on as we have tried to work through this
15 issue with the horsemen.

16 MR. PETRAMALO: Can you repeat that part? I'm
17 not sure I understood what you were saying.

18 MR. BLACKWELL: I said that this limitation on
19 our right to potentially pursue legislative change
20 has been an impediment on us getting a deal done.
21 That was an issue --

22 MR. PETRAMALO: No. I see.

23 MR. BLACKWELL: -- an issue in your last
24 exchange of offers. We made an offer and said that
25 we did not want to give that up. The response back

1 was not a counter offer and not anything that
2 addressed a percentage rebate, but it was we are
3 not going to sign any deal that gives you or allows
4 you to keep that right.

5 So that was certainly what appeared to break
6 things down. We thought that was an unfair stance.
7 And again, was looking for some help and guidance
8 to work through that issue with these parties.

9 COMMISSIONER DAWSON: Mr. Chairman.

10 CHAIRMAN REYNOLDS: Yes, please.

11 COMMISSIONER DAWSON: Mr. Blackwell, what in
12 your view would be the appropriate action for the
13 Racing Commission to take to get the result that
14 you're looking for?

15 MR. BLACKWELL: Sure. Again, I think I
16 mentioned this a couple times, but I would think we
17 would like to see a break-out session to go off the
18 record.

19 We haven't been comfortable -- I know others,
20 again, have, but throwing out percentages that have
21 either been under an agreement or being negotiated,
22 we don't think that's necessarily fair for those
23 numbers to be discussed in a public forum. And
24 again, we would look for some guidance to work
25 through some of these issues, because it does not

1 seem like there has necessarily been a good faith
2 effort to work out a deal throughout this process.

3 we have been told by a number of people,
4 including the HBPA, including members of the
5 Commission, there was a deal -- is a deal to be had
6 here. we just feel like it's something that maybe
7 needs to be facilitated, and personally, while I
8 have come in to Virginia on multiple occasions,
9 including last month, and the fact that I'm here
10 today is an opportunity for us to sit down and
11 discuss through some of these issues and would like
12 if we could potentially work something out.

13 CHAIRMAN REYNOLDS: Have you not had that
14 opportunity over the last couple of months with our
15 representative from the Virginia Racing Commission
16 and Mr. Hettel?

17 MR. BLACKWELL: To be honest, Mr. Chairman, no.
18 It just does not feel like there has been enough of
19 an emphasis on getting something done. I think
20 that the call that Mr. Hettel set up, it felt like
21 it was much different than what was discussed when
22 I was here in Virginia, and that was where we were
23 at a certain point and said that doesn't work. At
24 that point from what I heard from Frank, and I
25 certainly trusted him that he said we can work

1 something out and we realized we'd have to do
2 something better than what was discussed on the
3 steps of that hearing.

4 what I just did not see was any follow-up to
5 that, so for instance, a counter offer that was
6 presented was worse off than the previous offer,
7 and that just does not seem like it was a good
8 faith effort to reach a deal.

9 And again, I think it's in the best interest of
10 the Commonwealth of Virginia, for Virginia racing,
11 for Virginia ADW customers, for this Commission and
12 all parties involved to reach a deal. Again, I
13 think an opportunity is here today to do that, and
14 we would like to see an opportunity to see if that
15 can actually happen.

16 COMMISSIONER DAWSON: Mr. Chairman, I think we
17 need to point out that this Commission can only
18 meet in public.

19 CHAIRMAN REYNOLDS: That's correct.

20 COMMISSIONER DAWSON: So there's no opportunity
21 for a private meeting --

22 MR. BLACKWELL: Sure.

23 COMMISSIONER DAWSON: -- unless you have a
24 limit of two commissioners and an executive
25 director.

1 CHAIRMAN REYNOLDS: That's correct.

2 MR. BLACKWELL: Sure. So certainly, we would
3 want to comply with whatever, you know, rules and
4 restrictions there are, but that's what we're
5 requesting today.

6 COMMISSIONER DAWSON: I don't have any real
7 objection to that, but I don't know how much time
8 there is to do it.

9 VICE CHAIRMAN VAN CLIEF: Mr. Chairman, I have
10 one last question. Have the parties considered
11 having a formal mediator? Is that something you
12 all considered? Sounds like that's what you're
13 asking us to do. I'm not sure that's our job, by
14 the way.

15 MR. BLACKWELL: No. I'm not asking for a
16 formal mediation, but I think certainly what has
17 already been helpful today is to hear the
18 perspective of some of the commissioners and some
19 of the people who have worked through some of these
20 issues, that are aware of the issues, are aware of
21 where they started, so certainly it is helpful.

22 Again, Commissioner Miller's suggestion, and
23 regardless of how that was received, but the stance
24 on the ability to potentially seek a legislative
25 change, that is something that is important. At

1 least you feel like you're not giving away rights
2 that you have inherently.

3 CHAIRMAN REYNOLDS: The moneys that you all owe
4 right now, you claim you don't owe them, but the
5 moneys that you owe, it's nine percent that's being
6 withheld? You're paying one-and-a-half percent to
7 the Virginia Racing Commission?

8 MR. BLACKWELL: No. I think what that is made
9 up of is primarily from the VEA from day one.

10 MR. PETRAMALO: No.

11 CHAIRMAN REYNOLDS: What are you all
12 withholding percentage-wise?

13 MR. BLACKWELL: Most recently what we withheld
14 was payments to the VEA, horsemen and breeders, and
15 the reason that was done was because, again, it was
16 initially done in the interest of bringing these
17 parties to the table to have real discussions,
18 because it just felt like there was not a genuine
19 interest in getting something done.

20 CHAIRMAN REYNOLDS: Right.

21 MR. BLACKWELL: So it was done to bring the
22 parties to the table. What happened was
23 originally, the only entity that was cut off was
24 the VEA, despite what the original letter said.

25 CHAIRMAN REYNOLDS: Right.

1 MR. BLACKWELL: The horsemen and breeders kept
2 getting paid, so once that was realized and the
3 only party that was really coming back to the table
4 was the VEA.

5 Another thing -- I'm sorry to continue, but
6 another thing to materialize was the breeders were
7 involved. We said why is the breeders not part of
8 the discussion, and I think they said they'd never
9 been asked.

10 CHAIRMAN REYNOLDS: Right.

11 MR. PETRAMALO: Wait a minute. That's just
12 totally wrong. The Breeders Fund is a state tax.
13 It's not controlled by the Breeders Association.
14 It's a tax that he's not paying.

15 CHAIRMAN REYNOLDS: Let's get to --

16 MR. BLACKWELL: And if I may, Frank, that was
17 something that we were not aware of. The only
18 thing that we knew is the law requires us to pay
19 the breeders. The breeders seemed like any
20 other --

21 MR. PETRAMALO: All you have to do is read the
22 law. It's right in there. It tells you where it
23 goes.

24 CHAIRMAN REYNOLDS: All right. That's enough.
25 Let me get back to my questions, please. You're

1 withholding nine percent of the horsemen's money
2 and the VEA's money?

3 MR. BLACKWELL: That would have been most
4 recently, yes. I think that's what was pending --

5 CHAIRMAN REYNOLDS: Since July.

6 MR. BLACKWELL: No. No. Not since July. It
7 was four percent being withheld that started in
8 July. That's what kind of prompted or was the
9 intent that prompted the discussions.

10 MR. PETRAMALO: And that's not paying the state
11 Breeders' Fund. That's ten percent.

12 CHAIRMAN REYNOLDS: But you withheld from the
13 Virginia Equine Alliance \$363,000.

14 MR. BLACKWELL: I'm not certain of the exact
15 amount. I don't have that with me.

16 CHAIRMAN REYNOLDS: Okay. You're withholding
17 money from the Virginia Equine Alliance, right?

18 MR. BLACKWELL: That's correct. Yes.

19 CHAIRMAN REYNOLDS: You all decided to do that
20 because you thought maybe it could bring the
21 parties together?

22 MR. BLACKWELL: That was the intent. Yes. We
23 certainly questioned the constitutionality of the
24 payments, but it was also done in the interest of
25 bringing the parties to the table to discuss it --

1 CHAIRMAN REYNOLDS: Right.

2 MR. BLACKWELL: -- because again, our
3 perception was that they were not wholeheartedly
4 pursuing a rebate. It was we talked about it, we
5 need to see if we can, and we never heard anything
6 back from that point.

7 CHAIRMAN REYNOLDS: Then the job of the
8 Commission in my mind is that we have to decide,
9 you know, what laws are on the book and is what
10 you're doing lawful.

11 MR. BLACKWELL: Sure.

12 CHAIRMAN REYNOLDS: That's what we have to get
13 to. We would love to mediate. We would love to
14 bring the parties together and make an agreement,
15 and maybe we can, but right now, you know, there's
16 a law on the books. The Racing Commission wants to
17 regulate, we want to help, and I think we've been
18 extremely flexible up until this day. Maybe
19 there's a little bit more flexibility left, I don't
20 know, but --

21 MR. BLACKWELL: And certainly that's what we're
22 asking for, Chairman Reynolds.

23 CHAIRMAN REYNOLDS: Right. But the bottom line
24 is, I'm not going to say you're taking the law into
25 your own hands, but you're withholding money that

1 is due to other people. So hopefully we can work
2 this out. I strongly urge you all to work that
3 out, but who knows. I feel like you've been
4 working at it forever.

5 Mr. Hettel, do you have anything to add since
6 you have been involved?

7 MR. HETTEL: Well, both parties seem to be
8 discussing and trading emails, proposals and
9 counter proposals. The complication we have as a
10 commission, we can't arbitrarily select -- we've
11 got two companies of the three ADWs who are in full
12 compliance; we've got one who is in noncompliance.
13 The issue today is the noncompliance of the
14 existing law, be it good, bad or indifferent. I
15 think it's incumbent upon this Commission to go
16 ahead and take some action this afternoon, be
17 finished with it and carry on.

18 COMMISSIONER VAN CLIEF: Mr. Chairman, may I
19 make a suggestion?

20 CHAIRMAN REYNOLDS: Yes.

21 COMMISSIONER VAN CLIEF: That would be we
22 consider going into a brief executive session so we
23 can wrap this up and consider our alternatives,
24 seek legal advice.

25 CHAIRMAN REYNOLDS: As long as we're going into

1 executive session only to seek legal advice.

2 MR. PITCHFORD: All right. In accordance with
3 the provisions of §2.2-3711(a)(7) of the code of
4 Virginia, I move that the Commission go into closed
5 meeting for the purposes of consultation with legal
6 counsel and briefing by staff members or
7 consultants pertaining to actual or probable
8 litigation, where such consultation or briefing in
9 open meeting would adversely affect the negotiating
10 or litigating posture of the public body; and
11 consultation with legal counsel employed or
12 retained by a public body regarding specific legal
13 matters requiring the provision of legal advice by
14 such counsel concerning agenda item number three,
15 the administrative process hearing concerning
16 TwinSpires.com. The Commission will only ask
17 counsel questions and will not engage in
18 deliberations or any other activity.

19 COMMISSIONER VAN CLIEF: So moved.

20 CHAIRMAN REYNOLDS: Do I hear a second?

21 COMMISSIONER DAWSON: Second.

22 CHAIRMAN REYNOLDS: All those in favor, say
23 aye.

24 NOTE: The Commission votes aye.

25 MR. HETTEL: We have no place to adjourn to, so

1 this group will have to go on the other side of the
2 wall.

3 NOTE: There is a recess from 1:04 p.m.
4 until 1:22 p.m.; thereafter, the hearing continues
5 as follows:

6 MR. PITCHFORD: Section 2.2-3712 of the code of
7 Virginia requires a certification by this
8 Commission that the closed meeting was conducted in
9 conformity with Virginia law. Now, therefore, be
10 it resolved that the Virginia Racing Commission
11 certifies that to the best of each member's
12 knowledge, (i) only public business matters
13 lawfully exempted from open meeting requirements
14 under the Virginia Freedom of Information Act, and
15 (ii) only such public business matters as were
16 identified in the motion convening the closed
17 meeting were heard, discussed or considered by the
18 Commission in the closed meeting.

19 Is there a motion to that effect?

20 CHAIRMAN REYNOLDS: So moved.

21 COMMISSIONER VAN CLIEF: Second.

22 CHAIRMAN REYNOLDS: All those in favor, say
23 aye.

24 NOTE: The Commission votes aye.

25 CHAIRMAN REYNOLDS: Hearing none, the motion

1 carries. We are now back in session. I would ask
2 our counsel to read the motion.

3 MR. PITCHFORD: Pursuant to Virginia code
4 §59.1-385, the Commission shall effectively at five
5 p.m. on Friday, December the 18th, 2015, suspend
6 the ADW license currently held by TwinSpires,
7 unless prior to that date, TwinSpires is able to
8 demonstrate full compliance with the terms of its
9 license, including but not limited to payment of
10 all funds currently owed to the Virginia Equine
11 Alliance, Virginia Horsemen's Benevolent Protective
12 Association, and the Breeders Fund, as documented
13 on the spreadsheet presented to the Commission
14 today.

15 CHAIRMAN REYNOLDS: Do I hear a motion?

16 COMMISSIONER DAWSON: So moved.

17 CHAIRMAN REYNOLDS: Second?

18 MR. STEGER: Second.

19 CHAIRMAN REYNOLDS: All those in favor, say
20 aye.

21 NOTE: The Commission votes aye.

22 CHAIRMAN REYNOLDS: Those opposed? Hearing
23 none, the motion carries unanimously. All right.
24 thank you, Mr. Blackwell.

25 MR. BLACKWELL: Just for clarification of the

1 accounting that you have, who presented that?

2 MR. HETTEL: Dave Lermond.

3 COMMISSIONER MILLER: Dave Lermond from the
4 Virginia Racing Commission. Did you give a copy to
5 him?

6 MR. LERMOND: I did.

7 MR. BLACKWELL: I just was not certain who had
8 prepared it.

9 COMMISSIONER MILLER: Yes. Dave Lermond.

10 MR. BLACKWELL: Okay.

11 CHAIRMAN REYNOLDS: You know, certainly, we are
12 willing to keep working with you to try to get some
13 sort of compromise and get a deal done. That's
14 what we want. I'm a customer of TwinSpires. I'd
15 hate to lose you guys, but we've got to abide by
16 the law. So with that, I will say thank you for
17 coming in today.

18 MR. BLACKWELL: Sure. And the question in
19 terms of the payments that we are questioning
20 ourselves to the HBPA, we had brought that to your
21 attention. Is that something that we need to
22 provide information on for the Commission to take
23 action on that matter?

24 CHAIRMAN REYNOLDS: I think we can take that
25 matter up at another separate hearing. Let's get

1 you all in compliance first and go from there.

2 Any other comments from the commissioners?

3 None. Thank you very much for coming. I'm sure
4 Mr. Hettel or anybody else is available to you for
5 further clarification.

6 MR. BLACKWELL: Okay.

7 CHAIRMAN REYNOLDS: Thank you.

8 All right. It has been a busy day. I was
9 hopeful about a month ago from our last meeting in
10 December that not a whole lot was going on and
11 maybe we could just skip the meeting and send
12 everybody off for an early Christmas, but that is
13 not the case.

14 Let's keep moving on. Let's do the approval of
15 the minutes from our last meeting on November 17th.
16 Are there any additions or corrections to the
17 minutes?

18 COMMISSIONER VAN CLIEF: Move approval.

19 COMMISSIONER MILLER: Second.

20 CHAIRMAN REYNOLDS: All those in favor, say
21 aye.

22 NOTE: The Commission votes aye.

23 CHAIRMAN REYNOLDS: Opposed? Hearing none, the
24 motion carries. The minutes are approved.

25 Now we move on to the new business and we go on

1 to license renewals.

2 MR. HETTEL: Mr. Chairman, I'll try to be
3 brief, given the length of today's meeting.
4 Applications for ADW licenses were received in
5 order and have taken the staff review scrutiny, and
6 I recommend the application for Xpressbet and for
7 TVG be approved. I also recommend that the renewal
8 or TwinSpires be held in abeyance pending
9 compliance of the previous order.

10 CHAIRMAN REYNOLDS: Is that a motion?

11 MR. HETTEL: That's a request for a motion.

12 CHAIRMAN REYNOLDS: Do we do all three at once?

13 COMMISSIONER MILLER: I'll make the motion.

14 CHAIRMAN REYNOLDS: Thank you.

15 MR. HETTEL: Let's do all three at once.

16 MR. PITCHFORD: I'd recommend we do it one at a
17 time, since we are on record.

18 MR. HETTEL: Okay. Let's do them one at a
19 time. Okay. I suggest that Xpressbet be -- I
20 recommend that Xpressbet be renewed.

21 CHAIRMAN REYNOLDS: For one year?

22 MR. HETTEL: For one year. Yes, sir.

23 COMMISSIONER MILLER: I'll make that motion.

24 CHAIRMAN REYNOLDS: Second?

25 MR. STEGER: Second.

1 CHAIRMAN REYNOLDS: All those in favor, say
2 aye.

3 NOTE: The Commission votes aye.

4 CHAIRMAN REYNOLDS: Those opposed? Xpressbet
5 is approved for another year. The motion carries
6 unanimously.

7 MR. HETTEL: Continuing on, Mr. Chairman, I
8 suggest that the application for TVG's renewal be
9 approved.

10 COMMISSIONER MILLER: So moved.

11 COMMISSIONER DAWSON: Second.

12 CHAIRMAN REYNOLDS: We have a motion and a
13 second. All those in favor, say aye.

14 NOTE: The Commission votes aye.

15 CHAIRMAN REYNOLDS: Opposed? Hearing none, the
16 motion carries.

17 MR. HETTEL: Continuing, Mr. Chairman, I
18 suggest that the application for TwinSpires be held
19 in abeyance pending compliance with the previous
20 order.

21 COMMISSIONER MILLER: Mr. Chairman.

22 CHAIRMAN REYNOLDS: Mr. Commissioner.

23 COMMISSIONER MILLER: Regarding holding
24 TwinSpires' license renewal request in abeyance,
25 I'd like for our counsel to indicate how the

1 Commission will handle that, absent having another
2 full Commission meeting before the end of
3 December 31st.

4 MR. PITCHFORD: Commissioner Miller, what the
5 Commission has done in the past in similar
6 situations is delegate to the chair and executive
7 secretary the ability to approve licenses upon
8 demonstration that certain requirements have been
9 met.

10 So if the Commission wishes to do so in this
11 situation, it can similarly empower the chair and
12 the executive secretary to grant a renewal upon
13 certain conditions being met.

14 COMMISSIONER MILLER: I would make that motion
15 that we authorize the chairman and the executive
16 secretary to have the authority to issue a license
17 renewal to TwinSpires, should they meet all the
18 conditions and requirements for a normal license
19 renewal for ADW, plus show themselves to be in
20 compliance with our previous license suspension
21 order. Does that cover it?

22 MR. PITCHFORD: (Nodding head)

23 CHAIRMAN REYNOLDS: Is that a motion? That's a
24 good motion.

25 COMMISSIONER MILLER: I so move.

1 COMMISSIONER DAWSON: Second.

2 CHAIRMAN REYNOLDS: All in favor, say aye.

3 NOTE: The Commission votes aye.

4 CHAIRMAN REYNOLDS: Those opposed? Hearing
5 none, the motion carries unanimously.

6 MR. HETTEL: Mr. Chairman, Section B of that
7 new business, limited license renewals. The Racing
8 Commission has received in good order applications
9 for renewal from the Virginia Gold Cup. I have
10 reviewed that and it's in good order and in
11 complete correctness. It's basically a
12 resubmission of a previous application made a
13 couple of years ago and it was renewed last year.
14 I would suggest approval of that request for
15 renewal.

16 COMMISSIONER MILLER: So moved.

17 CHAIRMAN REYNOLDS: Is there a second or any
18 comments?

19 COMMISSIONER VAN CLIEF: I'd like to see if
20 maybe Mike can answer this. I was looking for a
21 representative of the Gold Cup. These dates
22 include the same flat racing dates as before, I
23 take it?

24 MR. HETTEL: Go ahead, Mike. why don't you
25 address that?

1 VICE CHAIRMAN VAN CLIEF: My question is going
2 to be -- this will just be for clarification,
3 because I'm not absolutely clear on this.

4 with regards to the condition of the racetrack
5 for flat racing, are there any questions? I know
6 there's been some discussion. I have been made
7 aware that there has possibly been some. Could
8 you address that for us, sir, at this point?

9 MR. PEARSON: This application addresses the
10 first Saturday in May and the fourth Saturday in
11 October, which are the conditional dates. In those
12 cards, there will be mixed cards, both jump and
13 flat racing. We're still in discussion with the
14 VEA for additional base flat races at Great Meadow,
15 and I think that it's contingent on funding and
16 other plans in the state for racing. Gold Cup is
17 certainly eager and willing to do whatever it can
18 to run flat racing in Virginia. So we're there and
19 we're willing to participate.

20 COMMISSIONER VAN CLIEF: Let me ask this. Your
21 course, then without any further work, is adequate
22 as it was this year to handle the dates which
23 you're requesting today?

24 MR. PEARSON: Yes. That was without question.

25 VICE CHAIRMAN VAN CLIEF: Thank you. That was

1 my question.

2 MR. PEARSON: Any other questions?

3 CHAIRMAN REYNOLDS: Commissioners, any other
4 questions? Okay. Thank you.

5 MR. PEARSON: Thank you.

6 CHAIRMAN REYNOLDS: I believe I have a motion
7 on the table. Do I hear a second?

8 MR. STEGER: Second.

9 CHAIRMAN REYNOLDS: All those in favor of
10 approving the race days, say aye.

11 NOTE: The Commission votes aye.

12 CHAIRMAN REYNOLDS: Those opposed? Hearing
13 none, the motion carries.

14 MR. HETTEL: Subject to that section, Mr.
15 Chairman, is the application by the Virginia Equine
16 Alliance for race days for 2016. It's in good
17 order and a resubmission of a previous application
18 with all complete and necessary documentation. I
19 suggest approval of their request for renewal of
20 the racing application of the limited license.

21 COMMISSIONER MILLER: So moved.

22 CHAIRMAN REYNOLDS: Is there a second?

23 COMMISSIONER VAN CLIEF: Second.

24 CHAIRMAN REYNOLDS: Are there any questions or
25 comments? Hearing none, all those in favor, say

1 aye.

2 NOTE: The Commission votes aye.

3 CHAIRMAN REYNOLDS: Those opposed? Hearing
4 none, the motion carries unanimously.

5 MR. HETTEL: Section C is the proposed Breeders
6 Fund budgets for 2016. There are separate
7 submissions from the Virginia Thoroughbred
8 Association and from the Virginia Harness Horse
9 Association. Documents are included in the
10 booklets with breakouts on expenditure. I think
11 again, let's do this separately. I suggest that
12 the VTA's request for breeder fund distribution be
13 approved.

14 CHAIRMAN REYNOLDS: Okay. I don't know if --
15 is the VTA --

16 MR. HETTEL: VTA, Debbie Easter, is present to
17 discuss if there's any questions.

18 CHAIRMAN REYNOLDS: Did you want to make any
19 comments on it yourself, Debbie, or point out
20 anything?

21 MS. EASTER: Sure. I will just say that as you
22 all are very aware, we're all working on programs
23 to move racing, promotion, everything that goes
24 along with sustaining and growing the industry.
25 Those things are all in effect, so the law requires

1 that we submit a budget by December 1st.

2 As you know, I think we've previously stated in
3 past submissions, our budget was sort of geared
4 towards keeping people engaged in these last couple
5 of years, more event-type stuff.

6 I've also put a proposal in the packet in a
7 letter to Bernie about things that an idea that I
8 think is a good idea for promotion of the industry,
9 but until we can shore up a little bit about what
10 our finances are gonna look like with the Alliance
11 and where we're going forward, I can't tell you
12 that that's where we're headed.

13 So what I would like you to do is approve our
14 current budget, which is the budget that I handed
15 in which is very similar to those in the past, in
16 the hopes that we'll come together with some money
17 for some good promotions for the industry in the
18 near future and come back and just ask you, hey,
19 this is where we went to spend this money.

20 CHAIRMAN REYNOLDS: I have a question about the
21 advertise and promotion section.

22 MS. EASTER: Sure.

23 CHAIRMAN REYNOLDS: At the very end of 2016
24 there, you've got 10,500 for the promotion of race
25 events in 2016; I understand that.

1 MS. EASTER: All right.

2 CHAIRMAN REYNOLDS: Tell me about the next
3 line. Is that an advance for ADW or is that for
4 advertising?

5 MS. EASTER: In the spirit of good partners, we
6 always thought that it was in the best interest for
7 us to promote the three out-of-state ADW companies
8 to people in Virginia because it was good for us
9 and it was good for them.

10 So that's something that's been on our mind for
11 a while. I'd like to have more money to do it, and
12 it may be a part of this other plan, bigger plan
13 down the road.

14 CHAIRMAN REYNOLDS: Since that's where the
15 revenue is coming from, I think that's probably --

16 MS. EASTER: That's how partners work.

17 CHAIRMAN REYNOLDS: -- a good idea. Do the
18 other commissioners have any questions or comments
19 on the budget?

20 COMMISSIONER DAWSON: My comment is on the
21 sponsorship to contributions.

22 MS. EASTER: Yes, ma'am.

23 COMMISSIONER DAWSON: I notice there not too
24 much change, but I'm happy to see you're also
25 supporting the Lift Me Up program in 2016.

1 MS. EASTER: Sure. That happens -- I'll tell
2 you why that happens. Some of our events, we
3 partnered with some other what I would call
4 charitable organizations, and so we made the ticket
5 priced so that we could give them back a portion of
6 the ticket price. So that's how those things
7 happen.

8 They were involved with some of our events at
9 the Gold Cup, as were the Montpelier TRF, and I
10 thought we had one other charity in there, but it's
11 slipping my mind right now.

12 COMMISSIONER DAWSON: Is the Jockey Club
13 program one of those?

14 MS. EASTER: You know, I'm doing some research
15 on the Jockey Club program. You're talking about
16 their program that they put money into the -- after
17 the Thoroughbreds that go on to show.

18 COMMISSIONER DAWSON: Oh, okay.

19 MS. EASTER: We have such little amounts of
20 money, I'm trying to figure out and I'm getting
21 help from the horse show folks, where we can get
22 the most bang for our buck. I don't know that it
23 benefits the state of Virginia, especially in our
24 times of less funds to give away money and promote
25 Thoroughbreds that might not be Virginia-bred or

1 might not be Virginia-owned, and I'm not sure we
2 get for the money we can give to the Jockey Club
3 TIP program that we're going to get our bang for
4 our buck there.

5 COMMISSIONER DAWSON: Okay.

6 MS. EASTER: We might do something of our
7 own with some of these horse shows in Virginia, but
8 I don't have the answer to that right now.

9 COMMISSIONER DAWSON: Okay.

10 MS. EASTER: We have a little committee looking
11 at that.

12 CHAIRMAN REYNOLDS: Thank you. Any other
13 questions or comments? Mr. Hettel, we have a
14 motion on the table. You have a recommendation?

15 MR. HETTEL: I seek a motion for approval.

16 COMMISSIONER MILLER: So moved.

17 COMMISSIONER DAWSON: Second.

18 CHAIRMAN REYNOLDS: I have a motion and a
19 second. All those in favor, say aye.

20 NOTE: The Commission votes aye.

21 CHAIRMAN REYNOLDS: Those opposed? Hearing
22 none, the motion carries unanimously.

23 MR. HETTEL: Mr. Chairman, the second part of
24 this request is the Breeders Fund for the Virginia
25 Harness Horse Association. One of the executive

1 secretaries submitted this to the Commission staff.
2 It has been reviewed. Iain couldn't be with us
3 today; he's got some health issues. I don't think
4 there's anybody left from the VHHA who can speak on
5 it.

6 Dave, could you give us a momentary comment on
7 this? This is the individual and general
8 application or submission?

9 MR. LERMOND: Yeah. I would just comment,
10 Mr. Hettel, that this is the exact same amount that
11 the VHHA has received, I think as long as I've been
12 on the Commission, ten or 12 years.

13 MR. HETTEL: Right.

14 MR. LERMOND: It is consistent and I would
15 agree with you where I would recommend approval.

16 COMMISSIONER MILLER: So moved.

17 MR. HETTEL: Seek your approval.

18 COMMISSIONER DAWSON: Second.

19 COMMISSIONER VAN CLIEF: Second.

20 CHAIRMAN REYNOLDS: We got a motion and two
21 seconds. All those in favor, say aye.

22 NOTE: The Commission votes aye.

23 CHAIRMAN REYNOLDS: Those opposed? Hearing
24 none, the motion carries unanimously.

25 MR. HETTEL: The final order of business is the

1 withdrawal of Colonial Downs, L.P.'s application
2 for a satellite wagering facility. That was held
3 open at the last meeting and this is the concluding
4 letter from Jim Weinberg of withdrawal. I don't
5 know if we need to take action on that necessarily.

6 CHAIRMAN REYNOLDS: Okay. I don't know.

7 MR. HETTEL: Okay. That's all I've got for
8 you.

9 CHAIRMAN REYNOLDS: All right. Well, thank you
10 very much. Now is the public comment period.
11 Those folks from the public who wish to speak,
12 please speak now. Speak briefly. Five minutes is
13 your limit, and please identify yourself if you
14 wish to speak. Anybody? Nobody from the public
15 wishes to speak.

16 Commissioner comments. I'll start on my left
17 and ask Mr. Steger if he has any comments.

18 MR. STEGER: Mr. Chairman, in light of the
19 schedule, I will make no further comments today.

20 CHAIRMAN REYNOLDS: Vice Chairman.

21 COMMISSIONER VAN CLIEF: Not being quite as
22 prudent as Commissioner Steger, I'd have one
23 comment that I'd like to make before we adjourn. I
24 just wanted to say the most important thing
25 obviously by far we dealt with here today is the

1 future of the ADW market here in the Commonwealth.

2 I would ask Mr. Blackwell and the other parties
3 as well, the VEA, HBPA, please make an effort with
4 the brief time you have.

5 I have had the pleasure over a long time of
6 dealing with Churchill Downs and their affiliates
7 in a number of capacities. I believe that it is
8 one of the very best operated and run organizations
9 in the business of racing. I do hope that they
10 will be able to remain in the marketplace, so I
11 would ask that Mr. Blackwell and your team make
12 every effort and that the VEA please do the same.
13 I hope you can come to a place to work something
14 out.

15 CHAIRMAN REYNOLDS: I'm going to reiterate
16 Commissioner Van Clief's comments. My whole family
17 is from Kentucky. We grew up at Churchill Downs.
18 The president of TwinSpires is a good person;
19 you're a good person. I just hope we can work out
20 our differences, and I really hope you all can do
21 that. Other than that, I'll pass it along.

22 COMMISSIONER DAWSON: Just want to say that in
23 light of the fact this is our last meeting for
24 2015, I want to thank and congratulate really all
25 of you, especially the chairman, and the other

1 commissioners who worked so hard all year, and
2 especially the staff of the VRC, who we couldn't do
3 without. So I just want to say thank you to you
4 all and have a happy holiday.

5 CHAIRMAN REYNOLDS: Thank you very much.
6 Commissioner Miller.

7 COMMISSIONER MILLER: I would just like to say
8 I am hopeful that TwinSpires ADW company, doing
9 business in Virginia for a long time, will come
10 into compliance and continue to do business. I
11 don't think it's wrong for someone to hope for
12 someone who has been a good corporate citizen in
13 the past to continue to operate.

14 I know that each ADW company probably has some
15 considerable concern about the racing in Virginia.
16 That was expressed by Mr. Blackwell, the extent to
17 which our racing has lessened in Virginia as a
18 product, but Virginia is working. Our horsemen and
19 the VEA, all of them, harness horsemen and
20 Thoroughbred Association, all of them, are working
21 to try to build Virginia racing back up to be a
22 first-class product.

23 Part of building that back up is the importance
24 of receiving the funds from the ADW companies.
25 That's a very important and vital part of building

1 racing back up in Virginia.

2 It is sort of, as Debbie indicated before, as
3 Debbie Easter indicated before, it's a partnership.
4 While the quality of racing in Virginia now may
5 look at a lower level to those ADW companies,
6 they're going to help build it back up to a
7 first-class racing program in Virginia. It's with
8 their help we're going to do that, and hopefully
9 with the help of the satellite wagering facilities
10 to get some of them back up.

11 The Virginia legislature, in their effort to
12 build Virginia racing, they put a cost on wagering
13 in Virginia. The Virginia legislature was willing
14 to allow extensive wagering, gambling in Virginia,
15 but at a cost, because the Virginia legislature in
16 allowing pari-mutuel wagering and allowing the
17 racing programs to go forward in Virginia, they
18 expect those people participating in wagering -- I
19 don't want to use the word --

20 MR. HETTEL: The G word.

21 COMMISSIONER MILLER: -- participating in
22 wagering to make a contribution to internal
23 interests in Virginia to build Virginia's economy.
24 That's why we're able to operate at all.

25 So we can't begrudge the fact that whether it's

1 eleven-and-a-half percent, nine percent, eight
2 percent, 15 percent, whatever it is, the
3 legislature has said that's the cost of doing
4 business in Virginia. We're allowing you to
5 exercise your business in Virginia at that cost,
6 and if you want to wager in Virginia, if you want
7 to operate in Virginia in whatever capacity, you
8 have to pay whatever the legislature says you have
9 to pay, and that's why we had to do what we did
10 here today.

11 CHAIRMAN REYNOLDS: Thank you. I'd like to
12 entertain a motion to adjourn.

13 COMMISSIONER MILLER: So moved.

14 COMMISSIONER VAN CLIEF: So moved.

15 CHAIRMAN REYNOLDS: Second?

16 COMMISSIONER DAWSON: Second.

17 CHAIRMAN REYNOLDS: All those in favor, say
18 aye.

19 NOTE: The Commission votes aye.

20 CHAIRMAN REYNOLDS: Anybody opposed? None.
21 Thank you all for coming.

22
23 NOTE: The meeting is adjourned at 1:46
24 p.m.
25

1 CERTIFICATE OF COURT REPORTER

2
3 I, Sandra G. Spinner, hereby certify that having
4 first been duly sworn, I was the Court Reporter at the
5 meeting of the Virginia Racing Commission at the time of
6 the hearing herein.

7 Further, that to the best of my ability, the
8 foregoing transcript is a true and accurate record of the
9 proceedings herein.

10 Given under my hand this 23rd day of December, 2015.

11
12
13 _____
14 SANDRA G. SPINNER
15 COURT REPORTER
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